855.

SUPREME COURT OF THE UNITED STATES.

No. 186.

JAMES NATIONS AND JOSEPH NATIONS, PLAINTIFFS IN ERROR,

vs.

NANCY ANN JOHNSON AND JAMES JOHNSON.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, HOLDING SESSIONS AT AUSTIN.

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THE UNITED STATES OF AMERICA.

District Court of the United States, District of Texas, at Austin

At a term of the district court of the United States, in and for the district of Texas, begun and held at the city of Austin, on the first Monday of January, in the year of our Lord one thousand eight hundred and fifty-eight, present the Honorable Thomas H. Duval, judge of said court, Wm. C. Young, esquire, marshal, and Matthew Hopkins, clerk, among others, were the following proceedings, to wit:

NANCY ANN JOHNSON and JAMES JOHNSON
vs.
JAMES NATIONS and JOSEPH NATIONS.

Be it remembered, that heretofore, to wit, on the 21st day of October, in the year of our Lord one thousand eight hundred and fifty-four, came the plaintiffs herein, by Messrs. Oldham, Marshall and Terrill, their attorneys, and filed their petition herein, which is in the words and of the terms following, to wit:

Petition.

Petition.

In the District Court, to wit, at Austin, Nov. Term, 1854.

THE UNITED STATES OF AMERICA,
The District of Texas.

To the Hon. John C. Watrous, Judge of the District Court of the United States of America, for the district of Texas.

Your petitioners, Nancy Ann Johnson, formly Nancy Ann Alvis, and her husband, James Johnson, resident of the State of Tennessee, present this their petition against James Nations and Joseph Nations, both resident of the county of Gonzales, in the State and said district of Texas, and herein represent unto your honor that heretofore, to wit, on the 11th day of October, 1850, your petitioner, who was then Nancy Ann Alvis, and a minor, by her next friend brought suit by "bill of complaint," in the district court of chancery for the northern district of the State of Mississippi, against said defendants, who were then residents of said northern district and said State of Mississippi, by which she sought to recover from them three negroes, slaves for life, to wit, Ellen, and her two children, Matilda, then about 12 years old, and Caroline, then about 7 years old, together with hire for the same; that afterwards the

said Nancy Ann intermarried with your petitioner, James Johnson, who, together with said Nancy Ann, was afterwards, by order of said court, admitted to prosecute said suit in their own right; that afterwards, to wit, on the 11th day of April, 1850, said cause having been submitted to said court for a final hearing, it was by a decree of the same dismissed at the costs of the complainants; that from said decree your petitioners prosecuted their writ of error to the high court of errors and appeals of said State of Mississippi, which afterwards, to wit, at the December term for 1853 of the same, rendered the following decision or decree in said cause, so carried up on a writ of error as aforesaid, to wit:

NANCY A. JOHNSON and JAMES JOHNSON, Pl'ffs in error,
vs.
JAMES and JOSEPH NATIONS, Defendants.

It appearing to the satisfaction of the court, that notwithstanding the order of publication granted at the October term of this court, in the year 1852, (page 248,) has been duly inserted in the Mississippian and State Gazette, as therein required, and said defendants have failed to appear, it is ordered that the court proceed to hear and determine this cause, as if process had been served upon them; and therefore the cause having been submitted upon the record from the district chancery court at Carrollton, and the court having sufficiently examined and considered the same, and being of opinion that the slaves, Ellen, and her children, Matilda about 10 or 12 years old, and Caroline, about seven years old at that time, are the property and separate estate of complainant Nancy Ann Johnson in her own right, it is considered by the court, and so ordered, adjudged, and decreed, that the decree of the vice chancellor dismissing the bill of complainants in this behalf at the April term of said court, in the year 1850, be and the same is hereby reversed; and this court, proceeding to pronounce such a decree as the court above should have rendered, doth order, adjudge, and decree that the complainants do have and recover of and from said defendants, for the sole and separate use and right of said complainant, Nancy Ann Johnson, the said slaves, Ellen, Matilda and Caroline, in the pleadings mentioned *mentioned*, and that said defendants be and they are hereby required to restore and deliver possession of said slaves to said Nancy Ann Johnson, or her agent for that purpose authorized; and this court being further of opinion that said complainant is entitled to have and recover of defendants hire for said slaves for the time which has elapsed since they were taken from the possession of the complainant, Nancy Ann, it is therefore ordered, adjudged, and decreed that this cause be remanded to the court below, and that an account thereof be taken according to the course of that court, and for such other and further proceedings as may be required in the premises, and fur-

ther, that said defendants pay the costs of this cause to be taxed, for which execution may issue; and that afterwards, to wit, on the 30th day of Jan., 1854, said decree was duly certified to said district court of chancery for observance, and that said last mentioned court, in pursuance of the mandate of said high court of errors and appeals, did afterwards appoint a commissioner to take the account mentioned in the said decree, at the coming in of whose report the following judgment or decree was rendered by said district court of chancery, to wit:

In the District Chancery Court at Carrollton.—April Term, 1854.

NANCY A. JOHNSON et als.
vs.
JAMES AND JOSEPH NATIONS.

Present, the Honorable Henry Dickenson, vice chancellor of the northern district of the State of Mississippi.

This cause having been now submitted, on the report of the commissioner appointed to ascertain the hire of the slaves in controversy, and it now appearing that after due notice the said commissioner did proceed to execute said commission, and has made report, showing that on the 4th of Feb'y, 1854, said defendants were indebted to said complainants in the sum of twenty-two hundred dollars, for the hire of said slaves to that date, and that two hundred dollars per annum will be a reasonable hire for the same, it is therefore further ordered and decreed that said complainants do have and recover of the said defendants, James and Joseph Nations, the sum of two thousand two hundred dollars, with interest till paid, at the rate of six per cent. per annum, from and after the 4th day of Feb., 1854, and that they do recover at the rate of $200 per year the hire of said slaves, from and after the said date of 4th Feb'y, 1854, until they shall be surrendered up according to the decree rendered in this cause, and that said report be in all things confirmed, and that execution issue as at law for the amount herein directed to be paid, and that complainants recover of them all their costs in this behalf expended; all of which will more fully appear by reference to a duly authenticated copy of the records of said district chancery court appertaining to the said cause in said court, and a copy of the judgment of the said high court of errors and appeals, which will be produced and referred to at the trial of this cause.

Your petitioners represent that the said judgments or decrees are yet in full force, they having never been in any manner annulled or superseded, or satisfied or discharged, either in whole or in part.

And your petitioners further represent, that by reason of the premises the said defendants became bound to deliver up said slaves

and pay said $2,200 with interest, and said hire at the rate of $200 per year, according to the tenor and effect of said decrees; and that they, said defendants, have failed and refused, and now fail and refuse, although often requested to deliver said slaves, or any part thereof, or pay said $2,200 with interest, and said hire or any part thereof, according to the said decrees or judgments.

Wherefore your petitioners pray that said defendants be duly summoned to appear and answer this petition as the law directs; that at the trial hereof judgment be rendered in favor of your petitioners for the possession of said slaves, and for the said $2,200, with the interest upon said, &c., the said hire at the rate of $200 per year as aforesaid, and for all the costs of this suit; and petitioners pray for general relief; and as in duty bound, &c.

OLDHAM, MARSHALL & TERRILL,
Attorneys for Plaintiffs.

I acknowledge myself security for all costs in this cause.

Witness my hand and seal, this the 21st day of October, A. D. 1854.

JNO. F. MARSHALL, [SEAL.]

And at the same time, to wit, on the 21st day of November, 1854, the plaintiffs, by their attorneys, Messrs. Oldham, Marshall and Terrill, filed the transcript of a record from the high court of errors and appeals, at Carrollton, Mississippi, which is set forth in defendants' third bill of exceptions, commencing at folio 50 and ending at folio 141.

And afterwards, to wit, on the 23d day of Oct., 1854, there issued from this court citations to James Nations and Joseph Nations, in words, to wit:

Citation.

The United States District Court, district of Texas.

The President of the United States to the Marshal or any of his lawful deputies of the district of Texas, greeting:

You are hereby commanded to summon James Nations, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Nancy Ann Johnson and James Johnson against James Nations and Joseph Nations, in an action on judgment, of which you will serve the said defendant, James Nations, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and the seal of court, at the city of Austin, this 23d day of October, [SEAL.] A. D. eighteen hundred and fifty-four, and 79th year of the independence of the United States of America.

On the back of the foregoing citation appears the following return by the marshal, to wit:

Return.

Received on the 26th day of Oct., 1854, and executed on the 30th day of Oct., 1854, by handing the defendant, James Nations, a true copy of this writ and a certified copy of petition in this cause, as furnished by the clerk of the court.

Serving writ.....	2 00
65 miles travelled, 6 cts.....	3 90
	5 90

BEN McCULLOCH, *U. S. M.*
By T. HILL ASHBY, *Deputy.*

Citation.

United States District Court, district of Texas.

The President of the United States to the Marshal or any of his lawful deputies of the district of Texas, greeting:

You are hereby commanded to summon Joseph Nations, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Nancy Ann Johnson and James Johnson against James Nations and Joseph Nations, in an action on judgment, of which you will serve the said defendant, Joseph Nations, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 23d day of October,
[SEAL.] A. D. eighteen hundred and fifty-four, and 79th year of the independence of the United States of America.

On the back of the foregoing citation appears the following return by the deputy marshal, to wit:

Return.

Received on the 26th day of Oct., 1854, and executed on the 27th day of Oct., 1854, by handing the defendant, Joseph Nations, a true copy of this writ and a certified copy of petition in this cause, as furnished by the clerk of the court.

Serving writ.....	2 00
65 miles travel, 6 cts.....	3 90
	$5 90

BEN McCULLOCH, *U. S. M.*
By T. HILL ASHBY, *Deputy.*

And afterwards, to wit, on the 5th day of December, 1854, the defendants filed their answer herein in words, to wit:

Answer.

Answer.

In the District Court of the United States, district of Texas.

NANCY ANN and JAMES JOHNSON } Answer.
vs.
JAMES and JOSEPH NATIONS. }

And now comes the defendants, and demur and except to plaintiffs' petition as insufficient in law, and that they, defendants, are not bound to answer the same; wherefore they pray judgment.

HAMILTON, CHANDLER & WALTON,
Def'ts' Att'ys.

Defendants deny all and singular the charges and allegations in plaintiffs' petition.

HAMILTON, CHANDLER & WALTON.

And afterwards, to wit, on the 29th day of December, the defendants filed their affidavit for continuance in words, to wit:

Affidavit for Continuance.

Affidavit for Continuance.

In the U. S. District Court, for the district of Texas.

NANCY ANN JOHNSON and JAMES JOHNSON } No. 94.
vs.
JAMES NATIONS and JOSEPH NATIONS. }

And now on this day comes the defendants, James Nations, and moves the court for continuance of the above cause until the next term of this honorable court, and for cause of continuance states, that he cannot safely go to trial for want of testimony material to his and his co-defendants' defence in said suit; that the said suit is upon a transcript of a judgment or decree of the high court of errors and appeals of the State of Mississippi, rendered therein at the December term thereof, 1853; that service was perfected on the defendant, James Nations, on the 30th day of October last, and on the defendant, Joseph Nations, on the 27th day of October last; that the duty of preparing for the defence of said cause devolved on the defendant, James, who the father of the said Joseph and affiant herein; that as soon as affiant, the said James, could possibly leave home, his residence being in the county of Gonzales, he came to Austin to employ counsel to defend said suit, having been referred by attorneys, to whom he applied in Gonzales county, to attorneys residing in Austin; that he, affiant, for the first time obtained the advice of counsel just before the commencement of the present session of your honor's court, and entirely too late to obtain

a commission to take the testimony of witnesses residing beyond the jurisdiction of this court before the commencement of the present session; that he, the affiant, believes he has a good defence to said suit; that the testimony necessary to make such defence he can alone procure from witnesses residing in the State of Mississippi, and from documents in said State; that he has used all and every diligence since the service of process upon him to ascertain his proper defence, and to prepare to obtain the testimony at the earliest period possible; but owing to the fact, that only a very few days intervened between the time of service upon him and his advice from counsel and the commencement of this court, and the consequent impossibility to get the testimony for the present term, and the many engagements of his counsel at the time, no effort was made to get the testimony further than to prepare to do so at an early day.

Affiant swears that this application is not made for delay, but that justice may be done.

JAMES NATIONS.

Sworn to and subscribed before me, this 9th day of Dec., 1854.

W. P. DE NORMANDIE,
U. S. Commissioner.

And afterwards, to wit, on the 11th day of Dec., 1854, the following order was had, to wit:

Order of Continuance.

NANCY ANN and JAMES JOHNSON
vs.
JAMES and JOSEPH NATIONS. } No. 94.

And now, on this day, come the parties by their attorneys; and upon motion and affidavit filed by said defendants, it is ordered that this cause be continued until the next term of this court.

And on the same day, Dec. 11th, 1854, defendants filed their amended answer, to wit:

Amended Answer.

NANCY ANN and JAMES JOHNSON
vs.
JAMES and JOSEPH NATIONS.

And now comes the defendants, and amend their answer by leave of the court and say: That there is no such record as the pretended record exhibited by plaintiffs against these defendants, and that if any court in the State of Mississippi pretends to render judgment against these defendants, that such court had no jurisdiction, and that such pretended judgment is absolutely null and void.

HAMILTON, CHANDLER & WALTON,
For Def'ts.

Order of Continuance.

And afterwards, to wit, at the November term, 1855, by order of court the cause was continued, in words to wit: "Continued."

And afterwards, to wit, at the November term, 1856, the following entry and order of Nov. 20 appears of record, to wit:

Order of Dismissal.

NANCY ANN and JAMES JOHNSON
vs.
JAMES NATIONS and JOSEPH NATIONS.

And now, on this day, this cause being regularly called for trial, the defendants appeared by their attorney, and said plaintiffs, after having been duly called by the marshal at the court-house door, failed to appear and prosecute said suit, and the defendants, by their attorney, moved to dismiss said case.

It is therefore considered by the court that said case be and is hereby dismissed for want of prosecution, and that said defendants have and recover of and from the plaintiff all costs in this behalf, for which execution may issue.

Chancery Entry—Cause Docketed.

And afterwards, to wit, on the 4th day of Dec., 1856, the cause was docketed on the chancery side of the court; and there appears the following entry: Transferred from the law docket, Dec. 4th, 1856.

And afterwards, at a term of the U. S. district court for the western district of Texas, on the first day of the term, to wit, June 5th, 1857, came the defendants, and by their attorneys, Hamilton, Chandler & Walton, and filed their answer in words, to wit:

Answer.

See defendants' first bill of exceptions, p. 32, for the foregoing answer, marked Exhibit A.

And afterwards, during the same term of the court, to wit, June 11th, 1857, the plaintiffs filed their exceptions to the answer of defendants, endorsed, to wit:

Chancery 11. Nancy Ann Johnson et als. vs. James Nations et als. Exceptions to answer, filed June 11th, 1857. M. Hopkins, clerk.

Which exceptions to answer is in words, to wit:

Exceptions to Answer.

U. S. District Court, western district of Texas, June term, A. D. 1857.

NANCY ANN JOHNSON and JAMES JOHNSON
vs.
JAMES NATIONS and JOSEPH NATIONS.

And now comes the said complainants, by their solicitor, and say that the answer of said defendants filed at this term of the court is wholly impertinent and insufficient; and these complainants except thereto, and show:

1st. That by the record exhibited from the high court of errors and appeals of the State of Mississippi, and of the district chancery court at Carrollton, in said State, it manifestly appears that said court had jurisdiction both of the parties and of the subject-matter of said suit.

2d. That it appears that said defendants were within the jurisdiction of said chancery court in Mississippi at the time of the institution of said suit, and therefore the allegation that they have been citizens of the State of Texas since Feb., 1850.

3d. That every allegation or pretence that said high court of errors of Mississippi had not jurisdiction to reverse the decree of said chancery court to reverse the decree dismissing said bill, is frivolous and insufficient.

4th. That said defendants are estopped by the record declared on and exhibited in this suit from declaring and claiming the said slaves, or any of them, are or is the property of said defendants, or either of them, as the same has been adjudicated by the said chancery court of Mississippi, as appears from the record exhibited in this cause.

5th. That said defendants are precluded by the decree aforesaid from denying that they are in the possession of said slaves.

6th. Wherefore said complainants pray that said portions of said answers above designated be stricken out as impertinent, and that they have judgment for their costs, &c.

W. S. OLDHAM,
For Complainants.

And afterwards, to wit, June 15th, A. D. 1857, at a term of the court held at Austin, for the western district of Texas, the Honorable Thomas H. Duval, judge, presiding, this cause being called, the court siting in chancery, the following proceeding was had.

Order transferring cause to Law Docket.

NANCY ANN and JAMES JOHNSON vs JAMES and JOSEPH NATIONS. } In Chancery—No. 11.

And now, on this day, came the parties by their solicitors, and upon motion and merits examined by the court it was ordered that this cause be transferred to the law docket, and the case continued.

And afterwards, at a term of the U. S. district court for the western district of Texas, setting at Austin, the Hon. Thomas H. Duval, judge, presiding, to wit, on the 29th day of January, 1858, the following order appears of record:

Order.

And now, on this day, came the defendants by their attorney; and on their motion it is ordered that they have leave to amend.

And afterwards, to wit, on the same day of the term, the plaintiffs filed their amended petition, in words, to wit:

Amended Petition.

U. S. District Court.—January Term, A. D. 1858.

UNITED STATES OF AMERICA,
Western District of Texas.

NANCY ANN JOHNSON and her husband, JAMES JOHNSON,
vs.
JAMES and JOSEPH NATIONS.

And now comes the said plaintiffs, and by leave of the court first had and obtained amend their original petition, and say that they, the said plaintiffs, are and were, at the time of the institution of this suit, citizens of the State of Tennessee, and that said defendants are and were citizens of the county of Gonzales and State of Texas.

And the said plaintiffs say that said negro women, Ellen, is of the value of one thousand dollars; that said girl, Matilda, is of the value of twelve hundred dollars; and that said girl, Caroline, is of the value of one thousand dollars. They, your petitioners, therefore pray that judgment be rendered in their favor for the recovery of the slaves aforesaid, and in default of the delivery of the possession of said slaves that they have judgment for their value; and they also pray for general relief.

W. S. OLDHAM,
Att'y for Plaintiffs.

Defendants' Amended Plea, or Exceptions.

And afterwards, to wit, on the 1st day of Feb., 1858, the defendants filed their amended plea or exceptions, by way of demurrer and replication of plaintiff, filed on the 26 Jan'y, 1858; which is in words, to wit:

NOTE. The exceptions referred to will be found in the defendants' 2 bill of exceptions, page 46.

And afterwards, to wit, February 6th, 1858, on motion of the defendants' counsel, and by leave of the court first obtained, the defendants filed the following plea, endorsed, to wit, Johnson vs. Nations.

Plea. Nul tiel record, filed February 6th, 1858.

M. HOPKINS, *Clerk.*

In words, to wit:

Defendants' Plea—"Nul Tiel Record."

United States District Court.—Jan'y Term, 1858.

NANCY ANN JOHNSON et als.
vs.
JAMES NATIONS et als.

The def't, by their attorneys come, and defend the wrong and injury, when, &c., and say that there is not any record of the said supposed recovery in the said court of the district chancery court for the northern district of Mississippi, at Carollton, in manner and form as the said plaintiffs have in their said petition alleged; and this these defendants are ready to verify. Wherefore they pray if said plaintiffs ought to have their aforesaid action thereof against these defendants, &c.

And these defendants by their attorneys come and defend the wrong and injury, when, &c., and say that there is not any record of the said supposed recovery in the said high court of errors and appeals of the State of Mississippi, in manner and form as the said plaintiffs have in their said petition alleged; and this these defendants are ready to verify. Wherefore they pray judgment if the said plaintiffs ought to have their aforesaid action thereof against these defendants, &c.

And these defendants by their attorneys come and defend the wrong and injury, when, &c., and say that there is not any record of the said supposed recovery, either in the said district chancery court for the northern district of the State of Mississippi, at Carrollton, or in the said high court of errors and appeals of the State of Mississippi, in manner and form as the said plaintiffs have in their said petition alleged; and this these defendants are ready to verify. Wherefore they pray judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against these defendants, &c.

HAMILTON, CHANDLER & WALTON,
Att'ys for Defendants.

And afterwards, to wit, on the 8th day of February, A. D. 1858, this case was called for final hearing, and the plea of nul tiel record having been argued and overruled by the court, and the exceptions of the plaintiffs to the answer of the defendants, after full argument, having been sustained by the court, and the answer of the defendants struck from the record, and the court having further overruled the exceptions of defendants to the amended petition of the plaintiffs, filed on the 1st of February, 1858; to which rulings of the court the defendants excepted at the time, and the plaintiff proceeded to read to the jury his evidence, the transcripts aforesaid, set forth in defendants' several bills of exceptions. The plaintiffs introduced G. W. Glasscock and Sterling Goodrich, to prove

the value of the slaves mentioned in the record, which evidence the defendants objected, and the objections being overruled by the court, the case was submitted to the jury upon the pleas, the law, and the evidence; and now the defendants ask the court to give the various charges, as set forth in the exhibit marked K in defendants' 6th bill of exceptions, and the instructions having been refused by the court, and the defendants excepting thereto, the court proceeded to charge the jury as follows in a written charge, which is in words, to wit:

Charge of the Court.

NANCY ANN AND JAMES JOHNSON
vs.
JAMES NATIONS AND JOSEPH NATIONS.

This suit is brought upon the transcript of a judgment or decree rendered in behalf of the plaintiffs against the defendants by the high court of errors of the State of Mississippi.

This record is conclusive proof before you as to the title of the negroes being in the plaintiffs, and the value of their hire up to the day of , 1854, as shown by the record.

The jury will therefore return a verdict for the plaintiffs for the amount of hire, at the rate of $200 per annum, from the date of the decree to this time. And they will further say in their verdict what they find the negroes to be worth at this time from the proof, fixing the value of each separately. They will also find for the plaintiff the amount due on the twenty-two hundred dollars, with interest thereon at the rate of six per cent. per annum, as fixed by them.

T. H. DUVAL,
U. S. District Court Judge.

The jury having retired and returned with their verdict, and now, to wit, Feb. 8th, A. D. 1858, the following entry appears of record:

Verdict and Judgment.

NANCY ANN JOHNSON and JAMES JOHNSON, her husband,
vs.
JAMES and JOSEPH NATIONS. } 247.

Now, on this day, came the parties, by their attorneys, and the defendants' plea of nul tiel record having been argued and overruled by the court upon the pleas and issues joined, thereupon came a jury, to wit: James G. Swisher, Sterling Goodrich, E. R. Oliver, A. N. Hopkins, Wm. O. Connell, J. W. Walker, G. W. Glasscock, Harvey Smith, Waller Booth, J. W. Weaver, Wm. Simpson, P. Priestly, twelve good and lawful men of the western district of

Texas, duly sworn and empannelled, who having heard the evidence and argument of counsel, and received the charge of the court, returned into court with the following verdict, to wit:

We, the jury, find for the plaintiffs as follows:

We find amount of decree of 4th Feb., 1854	$2,200 00
Interest to 4th Feb., 1858	528 00
Hire of negroes from the 4th Feb., 1854, to 4th February, 1858	800 00
Value of woman Ellen	900 00
Value of girl Matilda	900 00
Value of girl Caroline	700 00
	$6,028 00

GEORGE W. GLASSCOCK, *Foreman.*

It is therefore considered by the court that the said plaintiffs, Nancy Ann Johnson and James Johnson, her husband, do have and recover of and from the said defendants, James Nations and Joseph Nations, the said slaves in plaintiffs' petition mentioned and described, and each of them, or their value as aforesaid assessed by the jury, in case he cannot have and obtain said slaves in issue. And it is further considered by the court that said plaintiffs do have and recover of and from the said defendants the aforesaid sum of twenty-two hundred dollars, the hire of said slaves, as decreed by the chancellor's court for the northern district of Mississippi, with the sum of five hundred and twenty-eight dollars interest thereon, as assessed by the jury, at the rate of six per cent. per annum, and recover of and from the said defendants the further sum of eight hundred dollars, hire for said negroes since the date of said decree, as found by the jury, together with all their costs in this behalf in and about this suit expended, which are taxed at dollars and cents, and for which execution and all other necessary process may issue.

And afterwards, on the 12th day of February, A. D. 1858, the defendants filed their bond for writ of error, which is in words, to wit:

Bond for Writ of Error.

United States of America, District Court of the United States, western district of Texas, Feb. 12th, anno Domini, 1858.

NANCY ANN JOHNSON and JAMES JOHNSON vs. JAMES NATIONS and JOSEPH NATIONS. } In Error.

Know all men by these presents, that we, Andrew J. Nations, J. R. Brantley, James Nations, and Joseph M. Nations, are held and firmly bound unto the above named Nancy Ann Johnson and James Johnson in the sum of thirteen thousand dollars ($13,000),

to be paid to the said Nancy Ann Johnson and James Johnson, his executors, and administrators: to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 12th day of February, A. D. 1858.

Whereas the above named James Nations and Joseph Nations hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the district court of the United States for the western district of Texas, sitting at Austin, Texas:

Now, therefore, the conditions of this obligation is such, that if the above named James Nations and Joseph Nations shall prosecute their said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

JAMES NATIONS, [SEAL.]
JOSEPH M. NATIONS, [SEAL.]
By his Attorney, F. W. CHANDLER,
ANDREW J. NATIONS, [SEAL.]
JOHN R. BRANTLEY. [SEAL.]

Sealed and delivered in presence of—
M. A. TAYLOR.

Attest: MATTHEW HOPKINS,
Clerk U. S. District Court, Austin.

And afterwards, to wit, on the 13th day of February, 1858, came the defendants, by attorney, and filed their writ of error and citation in error, and assignment of errors, and copy of writ of error, duly allowed and signed by the Honorable Thomas H. Duval, judge of this court; which writ of error, citation, and assignment of errors, are in words, to wit:

Copy of Writ of Error.

Copy of Writ of Error, ss.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Judge of the District Court of the United States for the western district of Texas, having circuit court powers.

Because that in the record and process, and also in the rendering of judgment in a suit before you, between Nancy Ann Johnson and James Johnson, plaintiffs, and James Nations and Joseph Nations, defendants, in a plea of debt on a judgment from the State of Mississippi, and for damages, at Austin, a manifest error has intervened, to the great damage of the said James Nations and Joseph Nations, as in their complaint has been stated, and as

it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given them, under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the national government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Roger B. Taney, esquire, Chief Justice of said Supreme Court, at Washington aforesaid, this 13th day of February, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-second.

[SEAL.] THO. H. DUVAL,
U. S. Judge.

I, Matthew Hopkins, clerk of the district court of the United States for the western district of Texas, at Austin, the said court having circuit court powers, do hereby certify the writ of error on the reverse of this page, wherein James and Joseph Nations are plaintiffs in error and Nancy Ann Johnson and James Johnson are defendants in error.

In testimony whereof I have hereunto set my hand and the impress of the seal of court, the Hon. Thomas H. Duval being judge of the same.

[L. S.] MATTHEW HOPKINS, *Clerk.*

Citation in Error.

Citation in Error.

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States to Nancy Ann Johnson and James Johnson, or Williamson S. Oldham, their attorney of record, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the western district of Texas, at Austin, having circuit court powers, wherein James Nations and Joseph Nations are plaintiffs and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas H. Duval, judge of the district court of the United States for the western district of Texas, at Austin, having circuit court powers, this the 13th day of February, in the year of our Lord 1858.

[L. S.] THOS. H. DUVAL,
U. S. Judge.

I, Matthew Hopkins, clerk of the district court of the United States for the western district of Texas, the said court having circuit court powers, do hereby certify, that the citation "in error," directed to Nancy Ann Johnson and James Johnson, defendants in error, or to Williamson S. Oldham, their attorney of record, because of the non-residence of the said defendants in error, signed by Thos. H. Duval, judge of said court, on the reverse of this page was signed by the judge of this court and filed by the attorney of plaintiff in error, James Nations and Joseph Nations, this the 13th day of February, A. D. 1858.

In testimony whereof I have hereunto set my hand and the impress of the seal of court, at Austin, the 13th day of February, A. D. 1858, and of the independence of the United States the 82 year.

[L. S.] MATTHEW HOPKINS, *Clerk.*

Return.

Return.

Received of Matthew Hopkins, clerk of the U. S. district court, at Austin, Feb'ry 18, '58, and executed the same on same day, by handing to W. S. Oldham, attorney of record for Nancy Ann Johnson and Jas. Johnson, defendants in error herein, a certified copy, by the clerk of this court, of the within citation in error.

CHAS. CONEY,
Deputy U. S. M., W. D. T.

Sworn to and subscribed before me, this 18th of Feb'y, 1858.

M. HOPKINS,
Clerk, and ex-officio U. S. Commissioner.

Service, $2 00.

And the defendants, plaintiffs in error, also filed a copy of the aforesaid writ of error, endorsed, to wit:

Endorsement of Copy of Writ of Error.

Copy of a writ of error, lodged in pursuance of the statute of the United States in such case made and provided, for the above named defendants in error.

F. W. CHANDLER,
WM. M. WALTON,
Att'ys for Plaintiffs in Error.

Filed Feb. 13th, 1858.

M. HOPKINS, *Clerk.*

And the assignment of errors is endorsed, to wit: Johnson vs. Nations. Assignment of errors. Filed Feb'y 13th, 1858. M. Hopkins, clerk.

Assignment of Errors.

NANCY ANNA JOHNSON and JAMES JOHNSON
vs.
JAMES NATIONS and JOSEPH NATIONS.

And now comes the plaintiffs in error, James Nations and Joseph Nations, and make the following assignment of errors:

1st. The court erred in sustaining the exceptions of the plaintiffs to the defendants' answer, and in striking out the answer of defendants, as set forth in bill of exceptions No. 1, pages 32 and 33.

2d. The court erred in overruling the exceptions of defendants to the amended petition of the plaintiffs, filed on the 1st February, 1858, and in allowing said amendment, as set forth in bill of exceptions No. 2, p. 46.

3d. The court erred in admitting in evidence to the jury the transcript of the record of the high court of errors and appeals of the State of Mississippi, as set forth in bill of exceptions No. 3, page 50 to 140.

4. The court erred in admitting in evidence to the jury the transcript of the record from the vice chancery court of the northern district of the State of Mississippi, as set forth in bill of exceptions No. 3, page 50.

5. The court erred in overruling the exceptions and objections of defendants to the transcript of the record from the high court of errors and appeals of the State of Mississippi, and in overruling the exceptions and objections of defendants to the transcript of the record from the vice chancery court for the northern district of Mississippi, and in permitting said transcripts of records to be read in evidence to the jury, for the reasons set forth in bill of exceptions No. 3, page 50.

6th. The court erred in overruling the objections of defendants to the parol testimony of G. W. Glasscock and G. W. Goodrich, and permitting the same to go to the jury, as set forth in bill of exceptions No. 3, page 50.

7. The court erred in excluding the agreement as to facts from going to the jury as evidence, as set forth in bill of exceptions No. 4, p. 140 and 141.

8. The court erred in each of the charges given to the jury.

9th. The court erred in refusing the several charges asked by the defendants.

10. The verdict of the jury is contrary to the law and the evidence.

11. The court erred in rendering judgment against the defendants.

CHANDLER & WALTON,
Att'ys for Plaintiffs in Error.

And at the same time, to wit, the 13th day of February, A. D. 1858, the defendants, by their attorneys, filed their said several bills of exceptions numbered from one to six inclusive, duly signed and sealed by Thomas H. Duval, judge of said court, and are hereinafter set forth in words and terms as follows:

First Bill of Exceptions.

Defendants' First Bill of Exceptions.

NANCY ANN and JAMES JOHNSON
vs.
JAMES and JOSEPH NATIONS.

Be it remembered, that in the progress of this case the defendants filed, as pleading in said case, their answer to the petition of the plaintiffs; which answer was in words and figures following:

Exhibit A.

Exhibit A.

In the United States District Court, for the western district of Texas.

NANCY ANN JOHNSON and JAMES JOHNSON, Compl'ts,
vs.
JAMES NATIONS and JOSEPH NATIONS, Def'ts.
} In Chancery.

Answer.

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto or unto so much thereof and unto such parts as these defendants are advised is or are material or necessary for them to make answer unto, these defendants answering, saith:

That they are now and have been, since about the last days of February, 1850, resident citizens of the county of Gonzalez, in the State of Texas, and that they ceased to be citizens of the State of Mississippi on or about the 9th day of January of the same year,

and that since that time *that* have never been citizens thereof.

Answering from their own knowledge, they admit, that at the time of their removal from the State of Mississippi as aforesaid, there was pending in the district chancery court for the northern district of said State of Mississippi, at Carrollton, a certain suit or controversy between the said Nancy Ann Johnson, then Nancy Ann Alvis, as the complainant, and these defendants as defendants—said suit being for certain slaves: Ellen and her children, Matilda and Caroline, claimed by the said Nancy Ann from these defendants; but that the said suit or controversy, as these defendants are informed and believe, and therefore charge, was on the 11th day of April, 1850, dismissed from the docket of the said district chancery court for the northern district of Mississippi, by the chancellor thereof, at the cost and expense of the said Nancy Ann.

That since the said 11th day of April, 1850, these defendants have been residing in the State of Texas as aforesaid, and that no matter of suit or controversy has, to their knowledge, ever existed between them, the said defendants and the said Nancy Ann, or the said Nancy Ann and her husband, James Johnson, subsequent to the dismissal of said bill as aforesaid; nor did they know that said dismissed bill of complaint aforesaid had been revived by writ of error or otherwise until the commencement of this suit against them; these defendants state as a fact, that if any such controversy ever existed concerning said slaves subsequent to the said 11th day of April, 1850, at the suit of the said Nancy Ann, or herself and husband, James Johnson, that they, these defendants, never received any notice of the same, either in one form or another, but was entirely ignorant thereof, from the inception thereof until its determination

That defendants answering further say, that the said slaves, Ellen and her children, Matilda and Caroline, mentioned in said complainants' said bill of complaint, were, during the controversy between the said complainant, Nancy Ann, and these defendants, in the State of Mississippi, and which was dismissed as aforesaid—on the 11th day of April, 1850, from the docket of the district chancery court for the northern district of said State, by the chancellor thereof as aforesaid, the slaves and property of your respondent, James Nations, and so continued to remain his property slaves in his possession until disposed of by him. That they are informed and believe, and therefore charge, that the legal title to said slave property was in the said James Nations, your respondent, prior to the said controversy in Mississippi as aforesaid, and so remained in him until subsequent to the determination of said controversy as aforesaid, on the 11th day of April, 1850, and until they were disposed of by him as aforesaid; and they here deny, as

they have always heretofore done, that the legal title to said slaves to the best of their knowledge and belief, has ever been in the said Nancy Ann since they, the said slaves, were first reduced to possession by your respondent, James Nations, which was prior to the commencement of the controversy in the State of Mississippi as aforesaid.

But your respondent, James Nations, here denies that he is now in possession of said slaves or either of them, nor has he so been of the possession of them for a great number of years, to wit, since about the year 1849; and your respondent, Joseph Nations, here denies that he is in possession of said slaves, save and except the child Caroline, which was purchased by him, said respondent, from the respondent, James Nations, and gave therefor a valuable consideration.

These defendants answering further say, that if any proceedings were ever had against them, at the instance of the said Nancy Ann, or at the instance of herself and her said husband, James Johnson, in the State of Mississippi, of or concerning said slaves, Ellen and her children, Matilda and Caroline, subsequent to their removal from said State, and subsequent to the 11th day of April, 1850, when the controversy aforesaid herein before noted was dismissed, that, according to their best information and belief, all such proceedings, if any were so had against them, were absolutely null and void as against them, these defendants, without the territorial limits of the said State of Mississippi; because they say, that if any such proceedings were ever had as charged in complainants' complaint, that the same were had from inception to termination without any personal notice ever having been given to these defendants in accordance with the law of the land.

These defendants answering state, as a fact, that if any such proceedings on the matter of writ of error concerning the suit aforesaid between the said Nancy Ann and these defendants, and which was determined on the 11th April, 1850, in the district chancery court for the northern district of the State of Mississippi as aforesaid, that such proceedings on writ of error were incepted and determined without any personal notice being given to these defendants, or either of them; that at the time of the alleged grant of writ of error these defendants were citizens resident of the State of Texas, and have remained resident citizens thereof ever since, and received no actual notice of the granting of said writ, either in person*ally*, publication, or from rumor.

And these defendants here charge that the judgment rendered under such notice cannot be enforced in the State of Texas, a foreign jurisdiction to that in which such judgment was rendered, to wit, the State of Mississippi; and this they charge from information and belief.

Answering further, these defendants say, that they are informed and believe, and therefore charge, that their agent and attorney,

Elias S. Fisher, who acted in their behalf in conducting and defending the said suit aforesaid in the State of Mississippi until the same was dismissed from the docket of the court as aforesaid on the 4th day of April, 1850, and that he, the said Elias S. Fisher, did, on the dismissal of said suit as aforesaid, withdraw from the defence of the same, and requested that said withdrawal should be entered of record in said court, that by such withdrawal and record he, the said Fisher, ceased to represent these defendants in said suit as then conditioned, or in any subsequent proceedings which might be had therein against these defendants, or either of them; that at the time said writ of error is alleged to have been granted these defendants had no attorney of record or in fact upon whom service could be made in lieu of personal service upon them; that since the dismissal of said bill of complaint in the State of Mississippi as aforesaid, these defendants have never employed an attorney to defend or represent them at the suit of the complainant, Nancy Ann, or at the suit of her, the said Nancy Ann, or her husband, James Thompson, until the filing of the present bill of complaint against them.

Defendants further say that they are informed and believe, and therefore charge, that by the statute law of the State of Mississippi, where the judgment in this case exhibited against them was rendered, if rendered at all, it was necessary that notice should be given to the defendant in error in person at the time of taking the writ of error, or to his attorney of record; and that a failure to comply with the statute law of the land in that particular would render all subsequent proceedings had against such defendant in error so receiving no notice personally or by attorney record, utterly null and void, and of no binding effect beyond the territorial limits of said State of Mississippi.

These defendants say, as further answer, that they received no personal notice of the taking or grant of any writ of error against them from the determination of the controversy between said complainant, Nancy Ann, and these defendants, in the northern district chancery court of the State of Mississippi as aforesaid; nor did they have any attorney of record or in fact upon whom service could be perfected in lieu of personal service upon these defendants.

For further answer, defendants say, that if any notice were ever given to them in the matter of said writ of error aforesaid, such notice was given by publication, of which fact, if any such exists, they were entirely ignorant; that no such notice ever came under their observation, either absolutely or by rumor, until the service of the writ in this present cause.

For further answer they say, that they are informed and believe, and therefore charge, that a judgment rendered against them in

the State of Mississippi, under service by publication, they, defendants, being, as they were, citizens of the State of Texas, such judgment is utterly null and void as to these defendants and their property beyond the territorial limits of the said State of Mississippi, and can only affect defendants in their rights and privileges to property within the territorial limits of said State of Mississippi, and cannot be enforced in a territory foreign (to wit, the State of Texas) to the jurisdiction (to wit, the State of Mississippi) where such judgment was rendered; nor can it become the foundation of a suit or action against such defendant in such foreign territory.

Defendants further say, that they are informed and believe, and therefore charge, that if any judgment was ever rendered against them, as complainants charge, that the court rendering such judgment had no jurisdiction of the persons of these defendants, and could not legally render judgment against them which could be enforced against them as now attempted in a jurisdiction foreign and independent, to wit, the State of Texas, to the jurisdiction in which such judgment was rendered; and that such judgment, if any legally exists, is null and void, as regards the persons of these defendants and their property not within the jurisdiction of the said State of Mississippi, where the same was rendered.

Defendants further say, that they are informed and believe, and therefore charge, that by the statute law of the State of Mississippi, where the judgment declared upon was rendered, service in chancery causes may be made by publication; but they aver, on information and belief, that judgment rendered under such service doth not reach beyond the territorial limits of the State or sovereignty where the judgment is rendered; that they were citizens of the State of Texas, both at the time of service by publication, if any such was ever made, and at the time of the rendition of the judgment now sought to be enforced against them.

Defendants further say, that if the said complainants ever had any cause of action against them for the slaves mentioned in their bill of complaint, that the same is barred by the statute of limitations of two years, now in force in the State of Texas, because they say that said slaves were in possession of the said James Nations, your respondent, for a longer period than two years prior to the commencement of this suit against them.

Answering further, defendants say, that if complainant ever had any cause of action against them for the hire and services of said slaves mentioned in their said bill of complaint, that the same is barred by the statute of limitations of two years, now in force in the State of Texas, (excepting the hire for two years, if any hire be due,) because they say the same has been due for more than two years next before the commencement of this suit.

Further these defendants answer not, but pray that complain-

ants may be required to prove all affirmative matter set forth in their bill of complaint.

HAMILTON, CHANDLER & WALTON,
Att'ys for Defendants.

JAMES NATIONS,
J. M. NATIONS.

Affidavit of Jas. and Jos. Nations.

THE STATE OF TEXAS,
County of Gonzalez.

This day personally appeared before me, chief justice of the above county, (and ex officio notary public for the same,) James Nations and Joseph M. Nations, who being by me duly sworn, under oath say that the matters and things in the foregoing answer contained, when stated as facts, are true, and when stated from information, they believe to be true.

[L. S.] Given under my hand and the seal of the county court, at Gonzalez, this second day of June, A. D. 1857.

CHARLES MASON,
Chief Justice C. C., G. C.

Fee 50 cts., paid.

To which answer the plaintiffs excepted, on the following grounds:

Plaintiffs' Exceptions to Answer of Def'ts.

Exceptions to Answer.—Filed June 11th, 1857.

NANCY ANN JOHNSON et als.
vs.
JAMES NATIONS et als.

United States District Court, western district of Texas, June Term, A. D. 1857.

And now comes the said complainants, by their solicitor, and says that the answers of the said defendants, filed at this term of the court, is wholly impertinent and insufficient; and these complainants except thereto, and show:

1st. That by the record exhibited from the high court of errors and appeals of the State of Mississippi, and of the district chancery court at Carrollton, in said State, it manifestly appears that said courts had jurisdiction, both of the parties and of the subject-matter of said suit.

2d. That it appears that said defendants were within the jurisdiction of said chancery court in Mississippi at the time of the institution of said suit, and therefore the allegation that they have been citizens of the State of Texas since Feb'y, 1850.

3d. That every allegation and pretence that said high court of

errors of Mississippi had not jurisdiction to reverse the decree of said chancery court to reverse the decree dismissing said bill, is frivolous and impertinent.

4th. That said defendants are estopped by the record declared on and exhibited in this suit from declaring and claiming the said slaves, or any of them, are or is the property of said defendants, or either of them, as the same has been adjudicated by the said chancery court of Mississippi, as appears from the record exhibited in this cause.

5th. That said defendants are precluded by the decree aforesaid from denying that they are in the possession of said slaves.

6th. Wherefore said complainants pray that said portions of said answers above designated be stricken out as impertinent, and that they have judgment for their costs, &c.

W. S. OLDHAM,
For Comp'lts.

Upon which exceptions full argument was had before the court; and thereupon the court sustained the exceptions, and struck out the answer of the defendants.

To which ruling of the court the def'ts, by attorney, excepted at the time; and time being given to prepare this bill of exceptions, and now the court certifies this first bill of exceptions, and orders it to be made part of the record.

THO. H. DUVAL, [SEAL.]
U. S. Judge.

Second Bill of Exceptions.

Defendants' Second Bill of Exceptions.

NANCY ANN and JAMES JOHNSON
vs.
JAMES and JOSEPH NATIONS.

Be it remembered, that in the progress of this case the plaintiff filed an amended petition, in words and figures following:

Amended Petition of Pl'ffs.

W. D. Court, at Austin.—January Term, A. D. 1858.

UNITED STATES OF AMERICA,
Western District of Texas.

NANCY ANN JOHNSON and her husband,
JAMES JOHNSON,
vs.
JAMES and JOSEPH NATIONS.

And now comes the said plaintiffs, and by leave of the court, first had and obtained, amend their original petition, and say that they, the said plaintiffs, are and were, at the time of the institu-

tion of this suit, citizens of the State of Tennessee, and that said defendants are and were citizens of the county of Gonzalez, and State of Texas.

And the said plaintiffs say that said negro woman Ellen is of the value of one thousand dollars, that said girl Matilda is of the value of twelve hundred dollars, and that said girl Caroline is of the value of one thousand dollars. They, your petitioners, therefore pray that judgment be rendered in their favor for the recovery of the slaves aforesaid; and in default of the delivery of possession of said slaves, that they have judgment for their value; and they also pray for general relief.

W. S. OLDHAM,
Att'y for Plaintiffs.

To which amended petition the defendants filed their exceptions, as follows:

Exceptions to Amended Petition.

Defendants' Exceptions.—Filed Feb'y 1st, 1858.

NANCY ANNA JOHNSON and JAMES JOHNSON
vs.
JAMES NATIONS and JOSEPH NATIONS.

In United States District Court, at Austin, Jan'y, 1858.

Demurrer and Replication.

And now comes the defendants, after leave of the court, and file this amendment, by way of "demurrer and replication" to the amended petition of plaintiffs, filed on the 26th day of January, 1858.

And for demurrer to said amendment, these defendants say that said amended petition is not in law sufficient for said plaintiffs to have and maintain their action set up therein; wherefore they pray judgment.

And for special demurrer or exception to said amended petition, defendants say:

1st. That said amendment sets up a new cause of action against defendants, which is distinct, separate, and independent of the one alleged in their original petition.

2d. That said amendment is not sustained or in any way warranted by the terms of the judgment set up by plaintiffs to sustain their original cause of action.

3d. That said amendment seeks for a wider and broader degree of relief than can be sustained by the terms of the judgment set up in their original petition as the basis of this suit.

HAMILTON, CHANDLER & WALTON,
For Def't's.

In the event, however, that the demurrer and exceptions to said amended petition are not sustained by the count, then the defendants say, by way of answer and reply to the same:

1st. That each and all the allegations and charges of the amended petition are denied, and proof of the same called for.

2d. That if said plaintiffs ever had any cause of action for said slaves, that the same is barred by the statute of limitations of two years, now in force in Texas, because *the* say that if any such cause of action ever existed, that it accrued to plaintiffs more than two years next before the filing of said amendment, which these defendants aver was and is the commencement of suit for said slaves, or their value or their hire, and this they are ready to verify; wherefore they pray judgment.

3d. That if the said plaintiffs ever had any cause of action against these defendants for the said slaves, or their value, that the same is barred by the statute of limitations of two years, now in force in Texas, because they say that if any such cause of action ever existed, that the same accrued to said plaintiffs more than two years next before the filing of the original petition, and this they are ready to verify; wherefore they pray judgment.

HAMILTON, CHANDLER & WALTON,
Att'ys for Def'ts.

And said exceptions and the issues under them being fully discussed in the hearing of the court, the court overruled the exceptions, and allowed said amendment.

To which rulings of the court the defendants by attorney excepted at the time. and time given to prepare this bill of exceptions; and now the court certifies this 2d bill of exceptions, and orders it to be made a part of the record.

THOS. H. DUVAL, [SEAL.]
U. S. Judge.

3d Bill of Exceptions.

Defendants' 3d Bill of Exceptions.—Filed Feb'y 13th, 1858.

NANCY ANNA JOHNSON and JAMES JOHNSON
vs.
JAMES NATIONS and JOSEPH NATIONS.

Be it remembered, that on the the trial of this cause the plaintiff offered in evidence, in support of the issues on their part, the transcript of a record from the high court of errors and appeals from the State of Mississippi; which transcript is in words and figures following:

Transcript of Record from Court of Errors and Appeals, Mississippi.

THE STATE OF MISSISSIPPI.

Pleas had at a special term of the high court of errors and appeals, begun and held for said State, at the court-room, in the Capitol, at the city of Jackson, on the second Monday of December, A. D. 1853: Present, the Hon. C. P. Smith, presiding judge of said court, and the Hon. E. S. Fisher and the Hon. A. H. Handy, associate judges; present also, Caswell R. Clifton, clerk of said court.

NANCY A. JOHNSTON et als., Plaintiffs in Error, vs. JAMES NATIONS et al. } 6,474.

Be it remembered, that heretofore, to wit, on the 9th day of March, A. D. 1852, Nancy A. Johnston et al., plaintiffs, filed by order of court, in the office of the clerk of said high court, a writ of error and accompanying record from the vice chancery court at Carrollton; which said order of court, writ of error and record, together with the proceedings and final decree of said high court thereon, are as follows, viz:

NANCY A. JOHNSTON and JAMES JOHNSTON, Plaintiffs in Error, vs. JAMES NATIONS and JOSEPH NATIONS. } 6,474.

On motion of Mr. Sheppard, of counsel for the plaintiffs in error, and for good cause shown, it is ordered that the record in this cause be filed, and the cause regularly docketed.

Writ of Error.

THE STATE OF MISSISSIPPI,
District Chancery Court.

To the clerk of the District Chancery Court, greeting:

Because manifest error hath intervened in the record and process, proceedings and judgment, in and before the said district chancery court, in a suit between James Johnston and wife, complainants, and James Nations et als., defendants, wherein the said defendants obtained an order dismissing the bill of complaint in the cause, and we being willing that if there be an error in said record and proceedings it should be corrected, we command you if judgment be so given to send, under the seal of your said court, a complete and perfect exemplification of the said record, process, proceedings and decree, with this writ, so that the same be before our high court of errors and appeals, to be held at Jackson, on the first Monday of November, 1850, that the said court may do what is right in the matter.

Witness the Hon. W. L. Sharkey, chief justice of the said high court, the 1st Monday January, 1851; witness also Dan. R. Russell, clerk of said dist. ch'y court, and the seal of said court attached and writ issued, this 6th January, 1851.

[SEAL.]

DAN. R. RUSSELL, *Clerk S. C.*

Record.

THE STATE OF MISSISSIPPI,
District Chancery Court.

NANCY ANN ALVIS, pro ami Complainant,
vs.
JAS. AND JOSEPH NATIONS, Defendant. } 343.

Pleas before the Hon. Henry Dickenson, vice chancellor of the State of Mississippi for the northern district of said State, sitting at Carrollton, on the 11th day of April, A. D. 1850, at the April term, 1850, of said district chancery court:

Be it remembered, that heretofore, to wit, on the 26th day of November, A. D. 1846, came the complainant, by her solicitor, and filed in the clerk's office of the district chancery court, held at Carrolton, her bill of complaint, which is in the words and figures following, to wit:

Bill.

To the Hon. Henry Dickinson, Vice Chancellor of the State of Mississippi, for the northern district, at Carrollton:

The bill of complaint exhibited by Isaac S. Wilburn, as the next friend for Nancy Ann Alvis, who is a minor, under the age of 21, against James and Joseph Nations, citizens of Yallabush county, in said State. Your orator would show to your honor, that about the 23d day of January, A. D. 1838, James Nations sold and delivered to T. M. Alvis certain negro slaves, named Ellen and Matilda, for the price of 1,100 $\frac{00}{100}$, and gave his vendee his bill of sale for said slaves of that date, which was duly proved by subscribing witnesses thereto, and was recorded in office of probate clerk of Lafayette county of said State, 4th of April, 1840; and on the 5th day of February, 1839, Tilford M. Alvis transferred his title to said slaves to said Nancy A. Alvis, and delivered the same to her, and endorsed his assignment on the back of the bill of sale, all of which was duly recorded in office of register of Shelby county, Tenn., where said negroes remained in possession of said complainant, N. A. Alvis; all of which will more fully and at large appear from copy of said bill of sale, and certificates, and endorsements thereon, filed herewith, marked Exhibit A—now begs leave distinctly to state that negroes were sold and delivered to Tilford Alvis, and were retained in his possession until Feb'y 5th, 1839, and then were given by said Tilford to his sister, Nancy A. Alvis, and remained in her possession until they were taken by de-

fendants in Shelby Co., Tenn.—would state that the negroes now belonging to said Nancy A. Alvis under the title before set forth are Ellen, and her children, Matilda, about 10 or 12 years old, and Caroline, about 7 years of age. That some time in February, A. D. 1843, said negro slaves were by force, and stratagem, and fraud taken from the possession of said owner, N. A. Alvis, who was then living in Tennessee, by James and Joseph Nations, and they having obtained possession as aforesaid brought them into this State, and yet hold and retain them in their possession, in fraud and against the right of your oratrix, and have enjoyed and received all the profits from their labor, and refuses to deliver said negroes to said complainants; complainants would show to your honor that James Nations pretends to hold a mortgage on said slaves, which he states was made by Zacharia C. Alvis some time in the year A. D. 1840, to secure a debt due him for $400, with int. on the same; now they charge and state that said purchase gives no right to def'ts to retain said slaves, for they show that said slaves were not the property of said mortgagor at the time of making said pretended deed of mortgage, but belonged to said Nancy Ann Alvis; and further, they charge that they are informed that said pretended mortgage debt has been satisfied and paid by said mortgagor or some one for him.

They would further show to your honor that some one as the next friend of said Nancy Ann Alvis commenced an action of detinue or trover in Yallabusha circuit court for said slaves, which has never been determined; and they are advised in said action at law they cannot recover the specified property unless the defendants should be willing to give it up, but only damages for value, detention, and taking, and that it is more beneficial for said minor to obtain the said slaves and have them specifically restored to her, which relief she can only obtain by the aid of this court, so that the enjoyment of the specified property may be secured to her by such decree as this court may deem just and proper; they especially charge that said defendants obtained their possession by fraud and *and* reduced said slaves from possession of complainant by stratagem, and secretly conveyed them to the county of Yallabusha, where they are now detained in the possession of James and Joseph Nations, or one of them, and have detained them since Febr'y, 1843, and that the defendants may be required to answer all the charges of this bill, as fully and particularly as if interrogated thereto; they pray that they may be required to answer when and in what manner they obtained possession of said slaves, whether or not they have any claim on said property, and to set forth the same; whether the said mortgage debt has ever been paid, and they be required to produce the evidence of such debt; and as your complainants can only have relief in this court, they pray that James Na-

tions and Joseph Nations, citizens of Yallabusha county, in this State, be made defendants, and required to answer all the charges of this bill, and to that end that process of subpœna issue, commanding them under certain penalties to appear and answer; and on final hearing they pray that an account be decreed of the hire and profits of said slaves, and defendants required to pay the same, and they further be compelled and required by such final decree specially to restore said slaves to complainant, or that your honor will make such order and decree in the premises as may seem equitable and just, and for general relief.

SHEPPARD, *Sol'r.*

Exhibit A.

And afterwards, to wit, on the 10th of Oct., A. D. 1847, the following document, marked and referred to in the foregoing bill as Exhibit A, was filed, viz:

January, 23d day, 1838.

Received of T. M. Alvis $1,100 for a negro woman, Eliza and Matilda, slaves, which I warrant to be sound in body and mind, and warrant said negroes from all claims whatsoever forever.

Given under my hand and seal, this day above written.

JAMES NATIONS, [SEAL.]

Test: Z. C. HARRIS,
JAS. R. WYATT.

THE STATE OF MISSISSIPPI,
Lafaette County.

Personally appeared before me, William H. Smither, clerk of the probate court for said county, Z. C. Alvis, one of the subscribing witnesses to the foregoing receipt, who being duly sworn, deposeth and saith, that he saw James Nations sign, seal, and deliver the same, on the day and year it bears date, as his act and deed, and he also saw James D. Wyatt sign his name thereto as a witness, in presence of said Nations and in presence of each other.

Given under my hand and seal of said court, at office in Oxford, the 4th April, 1840.

[L. S.]

WILLIAM H. SMITHER,
Clerk.

THE STATE OF MISSISSIPPI,
Lafaette County.

I, William H. Smither, clerk of the probate court for said county, do certify that the foregoing receipt and certificate was re-

ceived in my office April 4th, A. D. 1840, and was duly recorded therein same day, in deed book B, page 318.

Given under my hand and seal of said court, at Oxford, the 4th day of April, A. D. 1840.

[L. S.]

WILLIAM H. SMITHER,
Clerk.

Nov. 15th, A. D. 1840.

THE STATE OF TENNESSEE,
Shelby County.

The foregoing receipt, with several certificates thereon endorsed, was this day duly recorded in my office, in book N, page 144.

W. P. REAVES,
Register.

Endorsement on back of Receipt.

I assign the within to Nancy Ann Alvis, this 5th of February, 1839.

TILFORD M. ALVIS.

This bill of sale was filed in my office for registration on the 14th Nov'r, 1842, at 3 o'clock p. m., and so noted in note-book No. 1, page 76.

W. P. REAVES,
Register.

Answer.

And afterwards, to wit, on the 23d day of Nov., A. D. 1847, the following answer of defendants to the foregoing bill was filed, viz:

To the Hon. Henry Dickinson, Vice Chancellor of the State of Mississippi, in Chancery, sitting at Carrollton.

NANCY ANN ALVIS, Complainants,
vs.
JAMES and JOSEPH NATIONS, Defendants.

The answer of James Nations and Joseph Nations to the bill of complaint of the above named Nancy Ann Alvis, exhibited in this hon. court against these respondents. These respondents having and reserving all right to except to the said bill for the many errors, untruths, and insufficiencies therein contained, for ans. thereto, or to so much thereof as they are advised and believe material for them to answer unto, answer and say: They admit the sale, so far as making a bill of sale to the said negroes to Tilford M. Alvis; but say that the contract for the said sale was made with Zachariah C. Alvis, and all of the terms of the trade agreed upon with him, and when the bill of sale was executed to T. M. Alvis, it was

done at the request of the said Z. C. Alvis. That said Z. C. Alvis and T. M. Alvis executed their joint note for the purchase money, a part of which will as hereafter be more fully shown, was paid by the said Z. C. Alvis, and balance not yet paid. They know nothing of the recording of said bill of sale in Lafaette county, State of Mississippi. They know nothing of the transfer of said bill of sale to the said complainants, and require full proof on this subject. They know nothing of the recording of said bill of sale and transfer in Shelby County, Tennessee. They deny that the said N. A. Alvis had the said negroes in her possession or under her control in Shelby county, Tennessee. But on the contrary, the said Z. C. Alvis had the possession, control, and management of said slaves, and received the profits as his own thereof. They know nothing of the said Exhibit A's being a true copy, and insist that it is not competent evidence for any purpose named in said bill. They do not recollect into whose possession the said negroes were delivered at the time the said bill of sale was executed, but believe that the said Tilford Alvis was not interested therein, further than permitting his name to be used by his father, Z. C. Alvis, which they have since learned was an arrangement between the said Tilford M. Alvis and Z. C. Alvis to defraud the creditors of the latter. They positively deny that the said Tilford M. Alvis remained in the possession of said negroes till July, 1839, or he ever for ten minutes had possession of them as his own property. They deny that the said Tilford M. Alvis ever gave said negroes to the said Nancy Ann Alvis; but on the contrary, made some secret arrangement before his death, by which the said negroes became the property of his father, Z. C. Alvis, and that the said pretended transfer to Nancy Ann is a mere contrivance to cheat and defraud his creditors, and more especially these respondents. They again deny that the said Nancy Ann had possession of said negroes in Shelby county, Tennessee. They admit that the names of the negroes are correctly set forth. They admit the taking possession of the said negroes in Tennessee from Z. C. Alvis, but deny the force, fraud, or stratagem, as also the taking possession from Nancy Ann, or in any manner molesting her rights. And here they answer, that the matter as to taking possession of said negroes by force, fraud, or stratagem has already been adjudicated in the circuit court of Yallabusha county, at the May term, 1843, and by the judgment of the high court of errors and appeals, at the Nov. term, 1845; which latter judgment gave the possession of the said slaves to these respondents. They admit, that after obtaining possession of said negro slaves they brought them into this State, and still hold possession thereof; but deny the fraud, or that Nancy Ann's rights are in any manner violated thereby, she having no title in the premises; or, if she has any, it is a mere pretence to defraud

these respondents. They admit, that since , 1843, they have received the profits of the labor of said slaves, if, in truth, there is any profit over and above their support. They admit that they will refuse to deliver said negroes to said complainants whenever she shall demand them, until the debts due respondent shall be paid; the nature of which shall be hereafter shown. They deny that complainant has ever demanded possession of them. Further answering, the said James Nations says that he does not pretend to hold a mortgage on said negroes, but actually has a good bona fide mortgage on them in full force, executed in the year 1840, as stated in said bill, in the sum of $, with interest on the same, and that the same has never been paid or in any manner discharged, unless the stealing of the note by the said Z. C. Alvis should be construed a satisfaction, which he charges the said Z. C. did some time 184 . And he, the said James Nations, says that the said negroes were, at the date of the said mortgage, bona fide the property of the said Z. C. Alvis; which said mortgage is herewith filed, marked Exhibit No. 2. And he further states, that the said mortgage was executed to secure him the balance of the purchase-money due for the said negroes by the said Tilford M. and Z. C. Alvis, and that when the same was so executed he surrendered the note of the said Tilford M. and Z. C. Alvis to the said Z. C. Alvis. And the said Joseph Nations answering, saith that some time about , he paid, as the security of the said Z. C. Alvis, the sum of $ to , for which claims a set off against the said Z. C. Alvis, and to retain the said negroes till he shall refund the same. They admit the action of detinue in Yallabusha circuit court, and insist it is the only and proper remedy, if any at all, for complainant; that she and the said Z. C. Alvis, confederating together, authorized said suit to be brought; that respondents have been put to great and unnecessary expense in defending said action, to wit, the sum of $20, for att'ys' fees for defending said action. They deny getting possession of said slaves by fraud or stratagem. They also deny any concealment in removing said negroes to Yallabusha county, except such caution as was necessary to prevent said Z. C. Alvis from stealing said negroes. Respondents say that the said James Nations has had the possession of said slaves and received the profits thereof, if really they are worth anything beyond their support. Respondents are willing to account to the said Z. C. Alvis for the hire of said slaves, and give him credit on the said claims against him. They deny that they are bound to account to the said complainant, denying any title in her. The said James Nations is willing to give such credit on said mortgages as may be just, not knowing at present the precise value of said slaves; and the said Joseph is willing, in like manner, to give credit on the said $275 and interest he has paid, but says that he has not received one dol-

lar or cent on account of said slaves, and has never had the possession thereof, except as agent for James Nations, and then only for a few days. These respondents deny all fraud in the premises; and having fully answered, pray to be hence dismissed with their costs, and here demur to the relief prayed in the said bill, because complainants' remedy is at law, and because said bill is not sufficient to give the relief prayed for.

FISHER,
For Resp'dts.

THE STATE OF MISSOURI,
Yallabusha County.

This day personally appeared before me, B. B. Pace, an acting justice of the peace in and for the county aforesaid, the above named James and Joseph Nations, who, being first duly sworn, severally say that the matters and things set forth in the foregoing answer, so far as made upon their own knowledge, are true, and so far as made upon the information of others they believe the same to be true.

JOSEPH R. NATIONS.

Sworn to and subscribed before me, this first day of Aug., A. D. 1847.

B. B. PACE, *J. P.*

Am'd Answer and Cross-bill

And afterwards, to wit, on the same day, the following amended answer and cross-bill was filed, viz:

To the Hon. Henry Dickinson, Vice Chancellor of the State of Mississippi, in chancery, sitting at Carrollton.

And the said James Nations, for amended answer and cross-bill against the said complainant, saith that the consideration of the said $400, named in the said mortgage, was the balance due him on account of the purchase-money due him by the said Tilford M. Alvis and Z. C. Alvis at the date of the said mortgage, with interest from the time therein named; that the said Tilford M. Alvis had previously departed this life, and that he, the said James Nations, held the note on the said Tilford M. Alvis and Z. C. Alvis for the said sum; that at the date of the said mortgage the said Z. C. Alvis represented himself as the true and bona fide owner of the said slaves, had possession thereof, and was receiving the profits arising from their labor; and he, the said James Nations, in truth believes, and so charges, that the said Z. C. Alvis was the true owner of the said negroes; that the title of said complainant is a mere pretence to defraud him in the premises, and is one of the stratagems of the said Z. C. Alvis. He further states, that if

the said complainant hath any title to said slaves, it is without any consideration binding in law, and that the said Z. C. Alvis was and must have been, if complainants' statements be true, her agent in the premises; that he was deceived and defrauded by the statements of the said Z. C. Alvis, touching the rights to the property aforesaid, and was induced by the false and fraudulent statements aforesaid to surrender to the said Z. C. Alvis the note given for the purchase money aforesaid, and to take the of the said J. H. Alvis, secured by the mortgage aforesaid, otherwise he never should have given up the said note. And he further saith, that the said Z. C. Alvis is interested in the said negroes, and is a necessary party to the said bill. He therefore insists that the said Tilford M. Alvis, if he transferred to the complainant, that there was no consideration therefor binding in law against his creditors, and that he was only induced to cancel his debt against the said Z. C. Alvis by virtue of the representations aforesaid. That if he was induced by fraudulent means to cancel said debt against T. M. Alvis, by fraudulent means, the same in law and equity remains uncancelled and in full force. That there has never been any administration on the estate of the said T. M. Alvis; wherefore he insists he has a just claim in equity to the extent of his debt and interest against the said negroes, independent of the mortgage aforesaid, if the bill be true, which, however, he denies. He prays that the said Z. C. Alvis may be made a party to the said bill; which being first done, he prays that the foregoing matters and things herein set forth may be taken as a cross-bill against the said Z. C. Alvis and the complainant, and if your honor should think the said Z. C. Alvis is not a necessary party, then the same to be taken as against complainant, by way of cross-bill, and that the said negroes may be decreed liable to his debt and interest, and such other and further relief afforded him on the trial as may be suitable to his case; and as in duty bound he will ever pray, &c.

FISHER, *Sol'r.*

THE STATE OF MISSISSIPPI,
Yallabusha County.

This day personally appeared before me, an acting justice of the peace in and for said county, the within named James Nations, who being first duly sworn saith, that the matters and things set forth in the within cross-bill, so far as stated on his own knowledge are true, and so far as stated on the information of others he believes to be true.

Sworn to and subscribed before me, this day of August, A. D. 1847.

J. T.

And afterwards, to wit, on the 10th day of Oct., A. D. 1849, the following was filed, viz:

In Chancery—at Carrollton.

NANCY ANN ALVIS, by, &c., }
vs.
JAMES and JOSEPH NATIONS. }

This day personally appeared before me, Sam'l W. Carr, an acting justice of the peace in and for the county of Yallabusha and State of Mississippi, James Nations, and being first duly sworn, says that the complainant and her next friend are not liable to pay the costs in the above stated case.

JAMES NATIONS.

Sworn to and subscribed before me, this 4th day of Oct., A. D. 1849.

SAM'L W. CARR,
J. Peace.

And afterwards, to wit, on the 10th day of Oct., A. D. 1849, the following order in this case was made, viz: Upon motion of defendants' counsel ordered that complainant give security for costs within 60 days, or the bill of complaint will be dismissed.

And afterwards, to wit, on the same day, the following order was made, viz:

Upon application of defendants' counsel, leave is granted to defendant to file his amended answer; which is herewith filed.

And afterwards, to wit, on the 10th day of Oct., 1849, the following am'd answer was filed, viz:

To the Hon. Henry Dickenson, Vice Chancellor of the State of Mississippi, in chancery sitting, at Carrollton, Oct. Term, 1849:

NANCY ANN ALVIS, by, &c., }
vs.
JAMES and JOSEPH NATIONS. }

The supplemental and amended answer of James Nations to the bill of complaint of the above named complainant.

This respondent, for supplemental and amended answer, says and shows to your honor that Zachariah C. Alvis purchased the negroes named in complainants' bill of this respondent some time about the year 1839, for the sum of about $1,100, about $700 of which were paid at the time by Z. C. Alvis, and his note given, together with one Tilford M. Alvis, for the balance; that at the time of said note the bill of sale was made to Tilford Alvis, at the request of the said Z. C. Alvis; that said Tilford was a son of the said Z. C. Alvis, a young man, and possessing no means with which to purchase negroes; that some time in the year 1839 the said Tilford Alvis departed this life; that the said Z. C. Alvis soon thereafter stated that the said Tilford had before his death made a bill of sale of said negroes to the said Z. C. Alvis, and thereby

preventing your orator from taking out letters of administration on his estate as a creditor to the extent of the $400 aforesaid; that no letters of administration have ever been granted upon the estate of the said Tilford Alvis, who died in Yallabusha county, and as will appear by Exhibit No. 2, herewith filed; that since the making of said mortgage, as Exhibit No. , he has paid the sum of two hundred and fifty-five dollars as security for the said Alvis, on a debt due to Wm. Tullis, and which was created before the sale of said negroes—statement of which will be furnished herewith, marked Exhibit No. 3, and prayed to be taken as a part of this answer. He has since the filing of his answer paid the costs in a certain cause of the said complainant, at the suit of your respondent, in the high court of errors and appeals, for all which he insists on a credit. A statement of this last judgment will be filed and marked Exhibit No. 4, and prayed to be taken as a part of this answer; that the reason why he did not answer fully as to the matter brought in this answer by way of amendment is because he did not think of the same, and the matter aforesaid has not occurred to him till recently.

Wherefore he prays leave to file this answer as part of his defence in this cause, and the matters and things decreed accordingly; he showeth that the costs paid in the high court of errors and appeals occurred about the controversy of these same negroes; that your respondent was plaintiff in error in said court, and gained the same.

FISHER,
Sol'r for Resp'dts.

THE STATE OF MISSISSIPPI,
Yallabusha County.

Personally appeared before me, Sam'l W. Carr, a com'r in chancery, James Nations, who states on oath that the matters and things stated in the foregoing bill as of his own knowledge are , and those stated upon the information of others he verily believes them to be true.

JAMES NATIONS.

Signed and sworn to before me, Oct. 4th, 1849.

SAM'L W. CARR,
Com'r, &c.

Order.

And afterwards, to wit, on the 11th day of Oct., A. D. 1849, the following order was made, viz:

Upon application, leave was granted to file a petition, and petitioner made a party complainant, as husband of the first complainant.

Petition.

And on the 10th day of Oct., 1849, the following petition was filed:

To the Hon. Henry Dickinson, Vice Chancellor:

The petition of Nancy A. Johnston and her husband, James Johnston, would show to your honor that your petitioner, Nancy A., was a minor, and in Nov., 1846, a bill was filed in her behalf by J. S. Wilbourn, which is now pending in the district chancery court at Carrollton. She now begs leave to state, that a few months since she has intermarried with James Johnston, and said Johnston now desires to be made a party to said bill, and that said suit may now be prosecuted by them in their own right.

NANCY A. JOHNSTON,
JAMES JOHNSTON.

Sworn to and subscribed before me, notary public for Shelby county, Tennessee, 10th Sept., 1849.

JAS. ROSE,
N. P., Shelby Co., Tenn.

Answer.

And afterwards, to wit, on the same day, the following answer was filed, viz:

To the Hon. Henry Dickinson, Vice Chancellor for the northern district:

The answer of Nancy A. Johnston and James Johnston to the cross-bill of James and Joseph Nations.

Your respondent would state to your honor, that since the original bill was filed for your oratrix, N. A. Alvis, by her next friend, Isaac Wilbourn, she has intermarried with James Johnston, who now joins in her answer to the cross-bill. And now for answer to so much of the allegations of the cross-bill as it is necessary to answer, states that she is informed that Z. C. Alvis did execute a mortgage on said slaves, to secure the balance of the purchase-money for the same; but, in connection with this admission, they also state that at the time said mortgage was given T. C. Alvis informed them that he had no title to the property, and such mortgage could give no security.

And further answering, says that said defendants, at the time said mortgage was given, had in their possession five or six negroes, the property of Z. C. Alvis, to secure his indebtedness to them; and that in 1841 Z. C. Alvis had a settlement with said defendants, by which the note secured in said deed of mortgage was paid and discharged, by Z. C. Alvis being liable thereon as security, and they beg leave to file the said note as Exhibit C; and from information they deny that T. C. Alvis represented himself

as the owner of the slaves; and if so, she would insist that it could not prejudice her title.

She admits that at the date of the alleged mortgage she was living with Z. C. Alvis in the county of Lafayette, in this State, and the deed or bill of sale was on record in the said county of Lafayette, on the 4th of April, 1840, and the possession was in her, and the only possession in Z. C. Alvis was simply apparent, and the profits of the slaves were used for her support and education. They deny that T. C. Alvis had any title or interest to said slaves; but she insists that the negroes were sold in good faith to her brother, T. M. Alvis, and title made to him by the defendant, James Nations, and were given to respondent by her brother.

They deny that the debt against T. M. Alvis was discharged or released by fraud, but that the same was legally discharged, and the note is now filed with this answer. She admits that no administration has ever been taken on the estate of T. M. Alvis. The only debt against him, except about $500, was the note aforesaid, and which was paid.

And now, having fully answered, prays for relief, &c.

SHEPPARD.

THE STATE OF TENNESSEE,
Shelby County.

This day personally appeared before me, James Rose, justice of the peace and notary public in and for the county aforesaid, James Johnston and his wife, Nancy, who being duly sworn, on oath state, that the allegations of their answer aforesaid are true, to *the* information and belief.

JAMES JOHNSTON,
NANCY A. JOHNSTON.

Sept. 10th, 1849.

Sworn to and subscribed before me, this 10th day of Sept'r, 1849. Witness my hand and official seal.

[SEAL.] JAMES ROSE, *J. P.*,
Notary Public, Shelby Co., Tenn.

Exhibit C.

And afterwards, to wit, on the day of , 1849, the following note, marked and referred to in the foregoing answer as Ex. C, was filed, viz:

$550.

On or about the 23d day of January next, we, or either of us, promise to pay James Nations, or order, $550, for value received of him, this 23d of January, 1838.

Given under our hands and seals.

T. M. ALVIS. [SEAL.]
Z. C. ALVIS. [SEAL.]

Endorsement: Paid January, 1841.

And afterwards, to wit, on the 26th day of Nov., 1849, the following bond for security of costs was filed, viz:

District Chancery Court at Carrollton.

vs.
JAS. AND JOSEPH NATIONS.

Know all men by these presents, that I, Charles P. Sheppard, am held and firmly bound unto James and Joseph Nations in the penal sum of $100, for which payment I am firmly bound by these presents. Sealed and signed this 25th of Nov., 1849.

The conditions of the above obligation is such, that if the decree to be rendered on the final hearing of the above stated case the costs of suit shall be ordered to be paid by complainants, then if said Sheppard pays such costs, this bond shall be void; else to remain in full force and effect.

Witness my hand and seal the date above written.

CHAS. SHEPPARD. [SEAL.]

And afterwards, to wit, on the 11th day of April, 1850, the following orders were made, viz:

This cause was submitted on a former day of on final hearing on the bill, answers, cross-bill, answers thereto, and proof; and his honor being advised in the premises, doth order that the bill of complaint herein be dismissed, at complainants' costs of suit; and by request of E. S. Fisher, it is hereby entered of record that he withdraws from this cause as counsel for defendants.

And afterwards, to wit, on the same day, the following order was made, viz:

And the complainant feeling himself aggrieved by the decree of his honor the vice chancellor this day made, dismissing the bill of complaint in this cause, have prayed an appeal, which is hereby granted, upon complainant executing bond in 90 days; and by consent, it is agreed that said appeal be taken directly to the high court of errors and appeals, said bond to be taken in the penal sum of one hundred dollars, with W. Ayres' security, conditioned according to law for payment of costs.

Depositions.

And afterwards, to wit, on the 10th day of Oct., 1849, the following depositions were filed, (on part of complainants,) viz:

THE STATE OF MISSISSIPPI.
Lafayette County.

Be it remembered, that on this the 24th day of September, A. D. 1849, I have caused to come before me, E. R. Belcher, an acting justice of the peace in and for said State and county, at the

court-house, in the town of Oxford, Z. C. Alvis, T. B. Alvis, Gabriella M. Alvis, John J. Dickard, and John B. Palmer, witnesses on behalf of Nancy A. Johnston and James Johnston, to be read in evidence in a certain matter of controversy now depending in the district chancery court, at Carrollton, in said State of Mississippi, wherein James and Joseph Nations are complainants and said Nancy A. Johnson and James Johnston are defendants. And the said Z. C. Alvis, of lawful age, being first duly sworn the truth to speak upon the said matters, deposeth and saith in answer, to wit:

Int'y 1st. Are you acquainted with the parties to this suit?

Ans. 1st. I am.

Int'y 2d. Look at the bill of sale hereto annexed, and state i not you were a witness to the execution of the same, and all abou it.

Ans. 2d. I was a witness, *and that is of nam is such in the paper*, and I saw James Nations sign, seal, and deliver the same, and the property therein specified, to T. M. Alvis.

Int'y 3d. Do you or not know what became of said slaves mentioned in the bill of sale, after they were delivered to P. M. Alvis? If so, state all about it.

Ans. 3d. The said slaves were afterwards given by P. M. Alvis to Nancy Ann Alvis, his youngest sister, as her property, and I saw the assignment made on the bill of sale the 5th Feb'y, 1839, and he then delivered the bill of sale to me, together with the property, into my hands, for her benefit, until she became of age or married, when they are to be delivered up to her.

Int'y 4th. State, if you please, what disposition you made of the said slaves, and are they or not in your possession at this time?

Ans. 4th. I hired them out *for* the period of my coming into possession; that is, upon the 5th Feb'y, 1839, up to the fall of 1841. I kept them at home, their situation not allowing them to be hired out. From 1841 until Feb'y, 1843, they were kept hired out—the woman at from $10 to 12 dollars per month, the girl at $3 per month. The morning of the 4th Feb'y, 1843, James Nations and Joseph Nations called at my house, then living in Shelby county, Tennessee, 4½ miles from Memphis, and requested me to go with them in search of some man who they said owed them money. Joseph Nations remained at my house, his horse being sick. I went with James Nations to Memphis, and returned home with him between 12 and 1 o'clock. They stayed until after dinner, and then saying that they had to go to James Flocks, in Marshall county, 35 or 40 miles from my house, they left me, and went about 3 miles to Worcemer creek. At 12 o'clock that night I was awakened from sleep, and discovered that the negroes were gone; discovering some horse tracks which excited our suspicions,

my son and self started in pursuit, following the tracks as our guide, and overtook James and Joseph Nations at a house in Panola county, about fourteen miles from the town of Panola, with the said negroes, three in number, in their *in their* possession. I asked them how they came in possession of said negroes, and Joseph Nations owned that he and his brother had slipped up, and each taking a child, they run off, the old woman following them. The next morning they sent for a lawyer, and talked of having a trial, &c.; but, as I suppose, by the advice of the said lawyer, they took the negroes and carried them off into Yallabusha county, whether or no, saying he (Jas. Nations) that he had a right to them.

Int'y 5th. You speak of there being a woman and two children at the time Nations carried them off; has or was not a child born after the negroes came into your possession?

Ans. 5th. There was a child born after they came into my possession, in 1839—the early part of 1839—February or March, which accounts *which accounts* for two; her name is Caroline.

Int'y 6th. Did or did you not have any transactions with Nations yourself during the time you held possession of said negroes in controversy? If so, state the nature of it, and all the particulars.

Ans. 6th. In 1840, James Nations, while I lived in Lafayette county, for something upwards of $3,000, in the month of Jan'y, 1841, about the 8th of the month, or the 9th of Jan'y, 1841. I gave him a mortgage, or six or seven negroes—my own property. Afterwards Nations insisted that I should give him a further mortgage on the negroes I held, belonging to Nancy Ann Alvis. I told him it was unnecessary, as he had plenty property to secure him, and that I could not guarantee a title to them; but as he insisted, I gave him a mortgage on Nancy's negroes, but told him it would be of no avail. In 1841 we had a settlement, when Nations denied having the mortgage on the three negroes aforesaid of Nancy's, and said he had lost it. On our settlement he gave me up one of the negroes, Rachael, which I had mortgaged to him, and I received from him the paper for which the property of Nancy Ann had been mortgaged. This was the last transaction I had with him, (Nations.)

Int'y 7th. Did you or not, in any conversation had with said Nations at that time, or any other time, set up any claim to said 3 negroes of Nancy Ann Alvis, either of offering to sell or mortgage them?

Ans. 7th. Never, except as before stated, with the qualification that I had no guarantee to give.

Do you now or have you ever set up any claim to said negroes?

Ans. 8th. I do not; they are Nancy A. Johnston's; and further this deponent saith not.

Z. C. ALVIS.

Sworn to and subscribed before me, this the day and year above.
E. R. BELCHER, *J. P.*

T. B. Alvis, being next sworn in due form of law, of lawful age, deposes, in ans. to—

Int'y 1st. Are you acquainted with the parties?

Ans. 1st. I have.

Int'y 2d. Are you the son of Z. C. Alvis, whose deposition is just taken?

Ans. 2d. I am.

Int'y 3d. Please state if you ever lived with your father in Shelby county, Tennessee, at the time James and Joseph Nations came there in 1843. If so, state all the particulars, and what occurred there in your presence, and to your knowledge.

Ans. 3d. I was living with my father in 1843, when the Nations came there early in the morning of Feb'y, 1843. As well as I remember they came to my father's house before breakfast; they said they were on hunt of a man who lived in Memphis, who James Nations said owed him some money, and persuaded father to go to Memphis with them in search of him; father concluded to go Memphis; Joseph Nations concluded not to go, as his horse was sick; they came back from Memphis about 1 o'clock that afternoon. Nations appeared anxious to get off, saying he was to ride to Flock's that night, and must go home the next day. During the night of the day they were at father's house the negroes, Ellen, the mother of Matilda and Caroline, her children, were missing. In the morning father and I started in search of the negroes, supposing from the circumstances that Nations had got them off. We rode as far as Mr. Neal's, between Hernando and Panola, and got there after dark, and found the negroes there in the possession of James and Joseph Nations. Father asked what time it was they got the negroes; Joseph Nations answered between 10 and 12 o'clock; James Nations said it made no difference, they got them between dark and daylight. The next morning James Nations came to me and proposed to have the matter settled up; to send for a justice of the peace, lawyer, &c., and for me to speak to father about it. Father said he had no objection. I started to Belmont for an attorney; while I was gone Nations' lawyer came to the house, and when I returned Nations and the negroes were gone; so that the lawyer I brought with me (Mr. Clinton) had his ride for nothing.

Int'y 4th. During the time that you were acquainted with the negroes in controversy, did you hear your father ever set up any claim to said negroes as his property in any way?

Ans. 4th. I never did; always understood and believed, and to this day believe, that they were my sisters' property, and no one else's.

Int'y 5th. When and where did you last see the negroes in controversy?

Ans. 5th. At Coffeeville, in 1843, when Nations brought them there.

Int'y 6th. Do you or not know the prices of hire which your father obtained for Ellen and Matilda while he had them in his care?

Ans. 6th. Ellen hired for about 10 or 12 dollars; Matilda 3 or 4, as well as I recollect. And further this deponent saith not.

ZACHARIAH B. ALVIS.

Sworn to and subscribed before me, the day and year above.

E. R. BELCHER, *J. P.*

John D. Palmer, a witness of lawful age, in answer to x—

Int'y 1st. Are you acquainted with the parties?

Ans. With some of them.

Int'y 2d. Were you or not in the year 1839 practising physician in the family of Z. C. Alvis, in Lafayette county, Mississippi?

Ans. I was.

Int'y 3d. State whether you waited on, as such, certain negroes belonging to Nancy Ann Alvis. If so, state if you please to whose account you charged your bill, and all about it.

Ans. I was called upon to see one of the negroes, and charged the account to Z. C. Alvis; he however told me the negro belonged to Nancy Ann Alvis, though he would see the bill paid. And further this deponent saith not.

J. D. PALMER.

Sworn to and subscribed before me, day and year above written.

E. R. BELCHER, *J. P.*

John J. Dickard, another witness, being duly sworn, of lawful age, deposeth and saith, in answer to interrogatory 1st, Are you acquainted with the parties to this suit?

Ans. I am.

Int'y 2d. State whether or not Tilford M. Alvis in the year 1838 brought certain negroes to your house as his own, and all you know about them.

Ans. 2d. He, about the 22d day of Feb'y, 1838, brought the negroes Ellen and Matilda to my house, and said he had bought them of James Nations. I then lived in Tallahatchie county. He afterwards rented land, and took them away with him.

Int'y 3d. State if you please what you know relative to Tilford M. Alvis giving said negroes to his sister, Nancy Ann.

Ans. 3d. I never heard him say anything on the subject. I have always heard it said and believed them to be her property. In 1841 she came to my house, and brought said negroes with her

as hers. She came in the spring, and continued until the fall. She was in immediate possession during that time.

Int'y 4th. Look at the signature of Tilford M. Alvis, on the back of the bill of sale, and say if you are acquainted with his handwriting. If so, have you seen him write, and is that his signature?

Ans. 4th. I am well acquainted with the handwriting of Tilford M. Alvis, and have seen him write often, and should say his signature. And further this deponent saith not.

JOHN J. DICHARD.

Sworn to and subscribed before me, the day and year above written.

E. R. BELCHER, *J. P.*

Gabriel M. Alvis, another witness, of lawful age, being duly sworn, deposeth and saith, in answer to the first—

Int'y 1st. Are you acquainted with the parties to this suit?

Ans. 1st I do.

Int'y 2d. Please state if you are not a brother of T. M. Alvis, dec'd. If so, state what you know relative to his purchase of certain negroes from James Nations; what he did with them; and all about it.

Ans. 2d. I am the brother of T. M. Alvis, dec'd; I know of having brought 2 negroes, Ellen and Matilda, to Mr. Dickards, in 1838, which he said he had bought from James Nations. I moved her myself from Mr. Dickard's to land which he had rented in the neighborhood of Oakland, in Yallabusha county, about 14 miles from Dickard's, the said negroes were with him. In Febr'y or March, 1839, he started for New Orleans; I went with him as far as Pharsalia. During the ride he told me he had endorsed the bill of sale for said negroes from Nations over to my sister, Nancy Ann, and that his reason for so doing was that if he never returned he wished her to have this property. He further said he wished me to attend to it for my sister, in case father should drop off or any accident occur; we parted, and I saw him no more until his death, which occurred on the 7th of May, 1839, on his return home from New Orleans, a short distance from home.

Int'y 3d. State if or not the said property did not continue in your father's hands as Nancy's property, and was so considered after the death of your brother, and if your father ever had any right to said negroes, or set up any claim to them whatever in his own right; speak particularly of your own knowledge.

Ans. 3d. I never heard of any claim set up by my father to said negroes, at any time or in any manner; but always looked upon the negroes as a gift to my sister by my brother, and in the old man's hands for her use and benefit.

Int'r 4th. Are you acquainted with the handwriting of Tilford M. Alvis, and have you seen him write? If so, please look at the signature to the assignment on the bill of sale annexed, and say if that be his signature.

Ans. 4th. I have seen Tilford M. Alvis write, and consider myself well acquainted with his handwriting, and believe it to be his genuine signature. And further this deponent saith not.

GABRIEL M. ALVIS.

Sworn to and subscribed before me, the day and year above written.

E. R. BELCHER, *J. P.*

THE STATE OF MISSISSIPPI,
Lafayette County.

I, E. R. Belcher, an acting justice of the peace in and for said county, do certify that the foregoing deposition of Z. C. Alvis, T. B. Alvis, Gabriel M. Alvis, John J. Dichand, and J. P. Palmer, was taken before me, at the court-house in Oxford, on the day stated in the caption; that said witnesses were all severally sworn according to law, *that said witnesses were all severally sworn according to law;* that said depositions are all my handwriting, and were read over to each deponent before signing. I further certify that said depositions have not been out of my possession since the taking of the same, and that no counsel appeared for the parties, neither did the parties themselves. Given under my hand and seal, this 26th day of Sept'r, A. D. 1849.

E. R. BELCHER, [SEAL.]
J. P., Lafayette Co.

And afterwards, to wit, on the 10th day of Oct., 1849, the following depositions were filed on part of defendants, viz:

Notice.

In Chancery—at Carrollton.

THE STATE OF MISSISSIPPI.

NANCY ANN ALVIS, by, &c.,
vs.
JAMES NATIONS & JOS. NATIONS.

The complainant and her solicitor, C. P. Sheppard, will please take notice, that on Thursday, the 4th day of Oct., 1849, before Sam'l W. Carr, commissioner in chancery, &c., the defendants will take the deposition of James R. Wyatt, to be read in evidence on the trial of the above stated cause; the deposition will be commenced at the hour of 11 o'clock, a. m., and continued until finished, at the office of the clerk of the circuit of Yal-

lubusha county, at the court-house thereof, when and where you can attend and cross-examine, if you like.

E. S. FISHER,
Sol'r for Def'ts.

Sheriff's return. Executed Oct. 2d, 1849.
JAMES COLLINS, *Sh'ff.*
By ALLEN COLLINS, *D. S.*

I, Samuel W. Carr, a commissioner in chancery, have called and caused to come before me James R. Wyatt, at the office of the clerk of the circuit court of the county of Yallabusha, at Coffeeville, this 7th day of Oct., 1849, to give his deposition, to be used in a matter pending in the district chancery court, at Carrollton, wherein Nancy Ann Alvis is complainant and James Nations are defendants. The complainant's counsel, C. P. Sheppard, was notified of the time and place of taking this deposition, but did not appear. The deponent, being first cautioned and sworn to speak the truth the whole truth in the premises, deposes as follows:

Int'y 1st. Are you acquainted with the parties to this suit?

Ans. 1st. I am acquainted with James and Joseph Nations, and was acquainted with Nancy Ann Alvis when she was quite young.

Int'y 2d. Look upon an instrument of writing, herewith exhibited, marked "A," and state if you know anything of the execution thereof, the consideration thereof, how the debt therein named was created, and for what purpose said mortgage was given.

Ans. 2d. On examining the instrument referred to in the above question, I answer that I was present when it was executed. Mr. James Nations sold to Z. C. Alvis a negro woman named Eleanor, and her child named Tilda, being the same negroes named in the mortgage referred to above. The mortgage was given to secure the payment of the balance due on the above negroes.

Int'y 3d. At the time of executing the said mortgage was there a note exhibited or spoken of, made by the said Z. C. Alvis; if so, what became of the said note; if said Alvis was asked if he knew anything of the note, what answer did he make thereto; what was done in reference to finding said note; where was said note last seen about the time above, and what opportunity had the said Z. C. Alvis to get possession of the same?

Ans. 3d. I do not recollect whether the note was exhibited at that time or not; neither do I recollect whether Alvis was asked if he knew anything about the note or not. Mr. Nations said he did not know whether it would be right for him to keep said note or give it to Alvis; at that time, or shortly after, we were seeking for the note. I had a handfull of papers, so had Alvis, looking for the note. Alvis said he did not know what had become of it. Alvis had an opportunity of taking the note while we were looking for it, over the papers for it.

Int'y 4th. You will please state the entire circumstances and transactions attending the sale of said negroes named, and the execution of the mortgage.

Ans. 4th. At the time Mr. Nations sold the negroes before named to Mr. Alvis I was present. Alvis requested Mr. Nations to make the bill of sale to Tilford N. or M. Alvis—signed the note first, and Z. C. Alvis signed with him. The reason why Z. C. Alvis wanted the bill of sale taken in the name of T. N. or M. Alvis was, as he stated, because there was some old debts hanging over him, and he was afraid he might be harrassed about them; at the time the mortgage was executed by Z. C. Alvis he told Mr. Nations that his son, Tilford, while on his death-bed, had made him a good title to said negroes.

J. R. WYATT.

Int'y 5th, by same. State who paid for said negroes—that is, the cash paid down; state the age of Tilford Alvis, and his means of purchasing negroes.

Ans. 5th. I do not recollect which of them paid the money. Tilford Alvis was, I supposed, 22 or 23 years of age. He had no means of purchasing negroes at that time that I know of.

J. R. WYATT.

THE STATE OF MISSISSIPPI,
Yallabusha County.

I, Sam'l W. Carr, a commissioner in chancery, hereby certify that the foregoing deposition of James R. Wyatt, written upon 3 pages, was taken before me, at time and place stated in the caption; the answers to the questions were written down at the time by me in the presence of the witness, and after they were read to him by me he signed the same in my presence. I am not in any way related to either party, or interested in the issue of the suit. I further state that said deposition has not been altered since it was signed by the deponent. Given under my hand and seal, this 4th day of Oct., 1849.

SAM'L W. CARR, [SEAL.]
Comm'r, &c.

Exhibit A.

Know all men by these presents, that I have this day transferred to James Nations all my right, claim, and interest to Ellen, a negro woman, slave, and her children, to secure him in a certain debt to him for four hundred dollars, and interest on the same for twelve months past, the 33 of January, 1840.

Z. C. ALVIS.

The said Alvis is to keep the above named negroes in possession until payment of the above amount by the 25th of Dec., 1840, if not sooner paid off.

Z. C. ALVIS.
JAMES R. WYATT.

STATE OF MISSISSIPPI,
District Chancery Court.

I, Dan. R. Russell, clerk of said court, do hereby certify that the foregoing thirty-four pages and the part of a page contain a full, true, and complete exemplification of the record and process, proceedings and decree, in the cause set forth in the caption, as fully as the same is in my office.

In testimony whereof I have hereunto set my hand and the seal [SEAL.] of said court, at Carrollton, this 7th January, 1851.

DAN. R. RUSSELL, *Clk.*

(No citation appears on file with the papers of this case.)

And afterwards, to wit, on the 18th day of March, A. D. 1852, an affidavit as to non-residence of defendants in said cause was filed in the office of the clerk of said high court of errors and appeals.

January Term, 1852.

NANCY JOHNSTON et als., Plaintiffs in Error,
vs.
JAMES and JOSEPH NATIONS, Def'ts in Error.

Personally appeared before the undersigned, who is a justice of the peace for the county of Carroll and State of Mississippi, Charles P. Sheppard, who on oath states that he has been informed, and from information believes, that the defendants in error in the above stated case are not residents of the State of Mississippi, and have no attorney of record on whom process can be served.

CHAS. P. SHEPPARD.

Sworn to and subscribed before me, this 11th March, 1852. In faith whereof, witness my hand and seal.

R. M. ST. CLAIR, *J. P.* [SEAL.]

And afterwards, on Saturday, Feb'y 19th, 1853, the same being a day of the October term, 1852, of said high court of errors and appeals, the following order was made in said cause by said court:

NANCY A. JOHNSTON et al., Plaintiffs in Error,
vs.
JAMES NATIONS et al.
6,474.

In this cause, the court being satisfied that James Nations and Joseph Nations, the defendants in error, are non-residents of this State, and have no attorney of record within the State upon whom process can be served, it is therefore ordered by the court, that unless the said defendants in error shall appear at the court-room, in the city of Jackson, on the 3d Monday of Oct., 1853, the court will proceed to hear and determine this cause, in the same

manner as if process had been actually served upon the said defendants in error.

It is further ordered by this court, that a copy of this order be published in the Mississippian and State Gazette, a public newspaper published in the city of Jackson, once a week for three weeks.

And afterwards, to wit, on Tuesday, January 10th, 1854, the same being a day of the December special term, A. D. 1853, of said high court of errors and appeals, the following order was made in said cause:

Exhibit E.

NANCY A. JOHNSON et al.
vs.
JAMES NATIONS et al.

This cause was submitted on briefs by Mr. Sheppard, of counsel for the plaintiffs in error, no person appearing on behalf of defendants in error.

And now afterwards, to wit, on Monday, January the 23d, 1854, the same being also a day of the special term of said court, begun and held for said State at the court-room, in the Capitol, at the city of Jackson, on the second Monday of December, A. D. 1853, the following final decree was rendered in said cause:

NANCY A. JOHNSON and JAMES JOHNSON, Pl'ffs in Error,
vs.
JAMES and JOSEPH NATIONS, Defendants. } 6,474.

It appearing to the satisfaction of the court, that notwithstanding the order of publication granted at the October term of this court, in the year 1852, (p. 248,) has been duly inserted in the Mississippian and State Gazette, as therein required, said defendants have failed to appear, it is ordered that this court proceed to hear and determine this cause as if process had been served upon them; and thereupon this cause having been submitted upon the record from the district chancery court at Carrollton, and this court having sufficiently examined and considered the same, and being of the opinion that the slaves Ellen, and her children, Matilda, about ten or twelve years old, and Caroline, about seven years old, at that time are the property and the separate estate of the complainant, Nancy A. Johnson, in her own right, it is considered by this court, and so ordered, adjudged and decreed, that the decree of the vice chancellor, dismissing the bill of the complainants in this behalf at the April term of said court, in the year 1850, be and the same is hereby reversed; and this court, proceeding to pronounce such decree as the court below should have rendered, doth order, adjudge, and decree that the complainants do have and recover of and from said defendants, for the sole and separate use and right of

said complainant, Nancy A. Johnson, the said slaves, Ellen, Matilda and Caroline, in the pleadings mentioned, and that said defendants be and are hereby required to restore and deliver possession of said slaves to said Nancy A. Johnson, or her agent for that purpose authorized; and this court being further of the opinion that the complainants are entitled to have and recover of the defendants hire for said slaves, for the time which has elapsed since they were taken from the possession of the complainant, Nancy A., it is further ordered, adjudged, and decreed that this cause be remanded to the court below, that an account thereof be taken according to the course of that court, and for such other and further proceedings as may be required in the premises; and further, that said defendants pay the costs of this cause to be taxed, for which execution may issue.

And afterwards, to wit, on the 18th day of February, A. D. 1854, the following execution for costs was issued from the office of the clerk of the high court of errors and appeals of said State, against the said James Nations and Joseph Nations, to wit:

THE STATE OF MISSISSIPPI,
High Court of Errors and Appeals, to wit:

Filing record	25
Entering appearances	50
Continuances	1 25
Docketing cause	25
Orders 10	2 50
Final decree	1 00
Order of pub., and copy	50
Filing same	25
Transcript fee, court below	14 00
Final record	16 00
Taxing cost	25
Copy of same	25
Their fi. fa	75
Certificate and seal	75
	$39 50
Sheriffs, for serving process, 2 defendants, copy, and entering same	3 75
Sheriff Yallabusha *esk* this	50
	$43 75

The State of Mississippi to the Sheriff of Yallabusha county, greeting:

We command you, that of the goods and chattels, lands and tenements of James Nations and Joseph Nations, late of your county, you cause to be made the sum of forty-three dollars and seventy-

five cents, which was awarded to the officers of the high court of errors and appeals, according to the form of the statute in such case made and provided, for their fees in a certain case, wherein Nancy A. and James Johnson were plaintiffs in error, and James and Joseph Nations defendants, and whereof the said Nations and Nations are convicted, as appears to us of record, and that you have the said moneys before the judges of the high court oferrors and appeals, to be holden at the court-room, in the city of Jackson, on the third Monday in April next, to pay the said officers their fees aforesaid; and have then and there this writ.

Witness the Honorable C. P. Smith, presiding judge of the said court, at the court-room, in the city of Jackson, on the third Monday in October, in the year of our Lord one thousand eight hundred and fifty-three, and in the seventy-seventh year of the independence of the United States of America. Issued the 18th day of Feb'y, 1854.

CASWELL R. CLIFTON, *Clerk.*
By JOSEPHUS DOTSON, *D. C.*

On the foregoing execution are the following endorsements, to wit:

Received 1st March, 1854.

T. H. JUDSON,
Sheriff.

No property found in my county to satisfy this fi. fa., or any part thereof, April 17th, 1854.

T. H. JUDSON,
Sheriff.

THE STATE OF MISSISSIPPI,
High Court of Errors and Appeals.

I, Caswell R. Clifton, clerk of said court, do hereby certify that the foregoing thirty-eight pages do contain a full, true, and complete copy of the transcript of record in the case of Nancy A. Johnson et al. vs. James Nations et al., No. 6,474, filed in my office the 9th day of March, A. D. 1852, together with the proceedings and final decree of said high court thereon; also the execution for costs issued from my office on said final decree, on the 18th day of February, 1854, as fully and completely as the same remain of record and on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court, at office, in the capitol, at the city of Jackson, this the 6th day of December, A. D. 1854.
[L. S.]

C. R. CLIFTON.

I, C. P. Smith, presiding judge of said high court of errors and

appeals, do certify that Caswell R. Clifton, whose certificate concludes the preceding transcript, was at the date thereof and is the clerk of said high court, duly appointed and qualified, and that his said certificate and attestation bears his genuine signature, and is in due form of law.

Given under my hand and private seal, this the 6th day of December, A. D., 1854.

C. P. SMITH. [L. S.]

To the reading of which transcript of said records the defendants objected, for the following reasons:

1st. Because the transcript of the records shows that the judgment of the vice chancellor court for the northern district of the State of Mississippi, at Carrollton, was in favor of the defendants, giving costs against the complainants, and that the defendants' counsel withdrew from the case, and had the withdrawal entered of record; and because it does not appear from the record that the appeal from the judgment of the court was prosecuted in ninety days from the date of the judgment, in accordance with the order granting the appeal, or within the time prescribed by the statute law of the State of Mississippi to execute appeal bonds, in appeals, from any inferior court of the State to the high court of errors and appeals; and because it appears from the face of said record that C. P. Sheppard, the attorney of record for complainants, made affidavit, in accordance with law, that the defendants were non-residents of the State of Mississippi, and had no attorney of record; that under said affidavit of C. P. Sheppard a writ of error was sued out, and the high court of errors and appeals, under and by virtue of said affidavit, ordered service to be made on the defendants by publication; and that because it appears from the face of said record that the high court of errors and appeals of the State of Mississippi took jurisdiction of said case under service by publication, and not by personal service on the defendants; and because it appears from the face of said record that the high court of errors and appeals had no jurisdiction over the persons of the defendants, save by service by publication; and because the judgment, orders, and decrees of said high court of errors and appeals contained in said record, show on their face that the defendants were non-residents of the State of Mississippi at the date of the suing out of the writ of error, and that said defendants made no appearance in said court; and that said high court of errors and appeals had no jurisdiction of the case, other than such jurisdiction obtained by them, by virtue of publication to the defendants in a weekly newspaper; by reason of which, defendants say that said judgment is null and void, and cannot be made the foundation of an action against the defendants in this court.

2d. That it appears from the face of said record that the high

court of errors and appeals has no jurisdiction of the persons of the defendants, and that the judgment rendered by said court, and contained in the record, is null and void, elsewhere than in the territorial limits of the State of Mississippi, and cannot be made the foundation of action against these defendants in this court, which is foreign to the jurisdiction of the State of Mississippi.

3d. Because it appears from the face of said record that the original suit instituted in the vice chancellor's court for the northern district of Mississippi, at Carrollton, was a proceeding in a court of equity, and that the judgment of the high court of errors and appeals was an adjudication, revising, correcting, and remanding the judgment of a court of equity, and cannot be made the foundation of an action in this court, which is a court of common law.

All which objections the court overruled, and permitted the plaintiff to read the said record as evidence to the jury. And thereupon the plaintiff offered in evidence the following transcript of a record from the vice chancery court for the northern district of the State of Mississippi, at Carrollton; to which the defendants at the time objected.

Bill of Complaint.

THE STATE OF MISSISSIPPI,
District Chancery Court, at Carrollton.

NANCY ANN ALVIS, by her next friend, ISAAC S. WILBURN, Complainant,
vs.
JAMES NATIONS and JOSEPH NATOINS, Defendants. } 349.

Pleas before the Hon. Henry Dickenson, vice chancellor of the State of Mississippi, for the northern district of said State, in chancery, sitting at Carrollton, on the 11th day of Oct., A. D. 1850, at the October term, 1850, of said court, then solely presiding.

Be it remembered, that heretofore, to wit, on the 26th day of November, 1846, the following bill of complaint was filed, which is in the words and figures following, viz:

Bill of Complaint.

To the Hon. Henry Dickenson, Vice Chancellor of the State of Mississippi, for the northern district, at Carrollton.

The bill of complaint exhibited Isaac S. Wilburn as the next friend for Nancy Ann Alvis, who is a minor, under the age of 21, against James and Joseph Nations, citizens of Yallabusha county, said State.

Your orator would show to your honor, that about the 23d January, 1838, James Nations sold delivered to T. M. Alvis certain negro slaves, named Ellen and Matilda, for the price of eleven

hundred dollars, and gave his vendee his bill of sale for said slaves of that date, which was proven by subscribing witnesses thereto, and was recorded in office of probate clerk of Lafayette county, of said State, 4th April, 1840. And on the 5th day of February, 1839, T. M. Alvis transferred his title to said slaves to Nancy Ann Alvis, and delivered the same to her, and endorsed his assignment on back of said bill of sale. All of which was duly recorded in the office of the register of Shelby county, Tennessee, where said negroes remained in possession of said N. A. Alvis. All of which will more fully and at large appear from copy of said bill of sale, certificates and endorsements thereon, filed herewith, marked Exhibit A,—now begs leave to say, that negroes were sold and delivered to T. M. Alvis, and were retained in his possession until the 5th of July, 1839; and were given by said Alvis to his sister, Nancy Ann Alvis, and remained in her possession until they were taken by defendants, in Shelby county, Tennessee. Would now state that the negroes, now belonging to said Nancy Ann Alvis, under the title before set forth, are Ellen, and her children, Matilda, about 10 or 12 years of age, and Caroline, about 7 years of age.

That some time in February, A. D. 1843, said negro slaves were by force, and stratagem, and fraud taken from the possession of said owner, Nancy Ann Alvis, who was then living in Tennessee, bef. James and Joseph Nations; and they having obtained possession as aforesaid, brought them into this State, and yet hold and retain them in their possession, in fraud and against the right of your orators, and have enjoyed all the use, and benefit, and profits from their labor, and refuse to deliver said negroes to complainant.

Complainants would show to your honor, that James Nations pretends to hold a mortgage on said slaves, which he states was made by T. C. Alvis some time in the year 1840, to secure a debt due him for $400, with interest on same. Now they state and charge, that such pretence gives no right to defendants to retain said slaves, for they show that said slaves were not the property of said mortgagee, but belonged to said Nancy Ann Alvis. And further, they charge that they are informed that said pretended mortgage debt has been satisfied and paid by said mortgagee, or some one for him.

They would further show to your honor, that some one, as the next friend of said Nancy Ann Alvis, commenced an action of detinue or trover in Yallabusha circuit court for said slaves, which has never been determined. And they are advised in said action at law they cannot recover the specific property, unless the defendant should be willing to give it up, but only damages for value, and detention, and taking; and that it is now important for said minor to obtain the said slaves, and have them specifically restored

to her. Which relief she can only obtain through the aid of this court, so that the enjoyment of the specific property may be secured to her by such decree as this court may deem just and proper.

They expressly state that said defendants obtained their possession by fraud, and seduced said slaves from possession of complainant by stratagem, and secretly conveyed them to the county of Yallabusha, where they are now detained in the possession of said James and Joseph Nations, or one of them, and have detained them since February, 1843; and that the defendants may be required to answer all the allegations of this bill as fully as if specially interrogated thereto. They pray that they be required to answer where and in what way they obtained possession of said slaves; whether or not they have any claim on said property, and to set forth the same; whether the said mortgage debt has been paid, and they required to produce the evidence of such debt. And as your complainants can only have relief in this court, they pray that James Nations and Joseph Nations, citizens of Yallabusha county, in this State, be made defendants, and required to answer all the charges of this bill; and to that end, that process of subpœna issue, compelling them to appear and answer.

And on final hearing, they pray that an account be of the hire and profits of said slaves, and defendants required to pay the same; and that they further be compelled and required by such final decree specifically to restore said slaves to complainants, or that your honor will make such further order or decree in the premises as may seem equitable and just, and for general relief.

SHEPPARD,
Sol'r.

Exhibit A.—Bill of Sale.

And on the 10th Oct., 1849, the following bill of sale, marked and referred to in the foregoing bill as Exhibit A, was filed, viz:

January, 23d day, 1838.

Received of T. M. Alvis eleven hundred dollars for a negro woman, Ellen and Matilda, slaves, which I warrant to be sound in body and mind, and warrant said slaves from all claims whatsoever forever.

Given under my hand and seal, this the day and date above written.

JAMES NATIONS, [SEAL.]

Test: C. ALVIS,
JAS. R. WYATT.

THE STATE OF MISSISSIPPI,
Lafayette County.

Personally appeared before me, Wm. H. Smither, clerk of the probate court for said county, Z. C. Alvis, one of the subscribing witnesses to the foregoing receipt, who, after being duly sworn, deposeth and saith, that he saw James Nations sign, seal, and deliver the same, on the day and year it bears date, as his act and deed, and he also saw James W. Wyatt sign his name thereto as a subscribing witness, in presence of said Nations and in the presence of each other.

Given under my hand and seal of said court, at office at Oxford, the 4th day of April, 1840.

[L. S.]

WILLIAM H. SMITHER,
Clerk.

THE STATE OF MISSISSIPPI,
Lafayette County.

I, William H. Smither, clerk of the probate court of said county, do hereby certify that the foregoing receipt and certificate were received in my office April 4th, 1840, and duly recorded therein same day, in deed-book B, pages 318.

[L. S.] Given under my hand and seal of office, this 4th April, 1840.

WILLIAM H. SMITHER, *Clerk.*

THE STATE OF TENNESSEE,
Shelby County.

November 15th, 1842.

The foregoing receipt, with several receipts therein endorsed, was this day duly recorded in my office, in book N, page 144.

W. R. REAVES, *Register.*

The bill of sale was filed in my office for registration on the 14th Nov., 1842, at 3 o'clock p. m., and so written in note-book No. 1, page 76.

W. R. REAVES, *Register.*

Assignment.

And on the back of the foregoing bill of sale is the following endorsement, viz:

I assign the within to Nancy Ann Alvis, this fifth day of February, 1839.

TILFORD M. ALVIS.

Answer of James and Joseph Nations.

And on the 23d Nov., 1847, the following answer of James and Joseph Nations was filed, viz:

To the Hon. Henry Dickenson, Vice Chancellor of the State of Mississippi, in chancery, sitting at Carrollton.

NANCY ANN ALVIS
vs.
JAMES AND JOSEPH NATIONS.

The answer of James Nations and Joseph Nations to the bill of complaint of the above named Nancy Ann Alvis, lately exhibited in this hon. court against these respondents, saving and reserving all right to except to the said bill, for the many errors and untruths and imperfections, insufficiences, therein contained, for answer thereto, or to so much thereof as they are advised and believe material for them to answer, answering say, they admit the sale, so far as the making a bill of sale to the said negroes to Tilford M. Alvis; but say, that the contract for said sale was made with Z. C. Alvis, and all the terms of the trade agreed upon with him, and when the said bill of sale was executed to the said T. M. Alvis, it was done at the request of Z. C. Alvis; that said T. M. Alvis and Z. C. Alvis executed their joint note for the purchase-money, a part of which, as will hereafter be more fully shown, was paid by said Z. C. Alvis, and balance not yet paid; they know nothing of the recordnig of said bill of sale in Lafayette county, State of Mississippi; they know nothing of the transfer of said bill to the said complainant, and require full proof on this subject; they know nothing of the delivery of said bill of sale to complainant; they know nothing of the recording of said bill of sale in Lafayette county, State of Mississippi; they know nothing of the transfer of said bill to the said complainant, and require full proof on this subject; they know nothing of the delivery of said bill of sale to the complainant; they know nothing of the recording of said bill of sale and transfer in Shelby county, Tennessee. They deny that N. A. Alvis had the said negroes in her possession or under her control in Shelby county, Tenn. But on the contrary, the said Z. C. Alvis had the possession, control, and management of said negroes, and received the profits as his own thereof; they know nothing of Exhibit A's, as being a true copy, and insist that it is not competent evidence for any purpose named in said bill. They do not recollect into whose possession the said negroes were delivered at the time of the execution of said bill of sale; but believe that the said Tilford Alvis was not interested therein, further than by permitting his name to be used by Z. C. Alvis, which they have since learned was an arrangement between the said T. M. and Z. C. Alvis to defraud the creditors of the latter. They positively deny that said T. M. Alvis remained in possession of said negroes until Feb'y, 1839, or that he ever for 10 minutes had possession of them as his own property; they deny that said Tilford M. ever gave said negroes to said Nancy Ann Alvis; but on the contrary, before his death, made some secret

arrangement, by which said negroes became the property of his father, Z. C. Alvis, and that the said pretended transfer by said Z. C. Alvis to said Nancy Ann is a mere contrivance of said Z. C. Alvis to cheat and defraud his creditors, and more especially these respondents; they again deny that the said Nancy Ann had possession of said negroes in Shelby county, Tennessee. They admit that the names of the negroes are correctly set forth. They admit the taking of the possession of said negroes in Tenn., from Z. C. Alvis, but deny the force, fraud, or stratagem, as also the taking possession from Nancy Ann, or in any manner molesting her rights; and here they answer, that as to the matter of taking possession of said negroes by force fraud, or stratagem, has already been adjudicated in the circuit court of Yallabusha county, at the May term, 1843, and by the judgment of the high court of errors and appeals at the November term, 1845, which latter judgment gave the possession of said slaves to your respondent; they admit, that after they obtained possession of said slaves, they brought them into this State, and still hold possession thereof; but deny the fraud, or that Nancy Ann's rights are in any manner violated thereby, she having no title in the premises, or if she has any, it is mere pretence to defraud these respondents; they admit that since 1843, they have received the labor and profits of said slaves, if in truth there is any profit above their support; they admit that they will refuse to deliver said negroes to said complainant whenever she shall demand them, until the debts due respondent shall be paid, the nature of which will be hereafter shown; they deny that complainant has ever demanded possession of them.

Further answering, the said James Nations says, that he does not pretend to hold a mortgage on the said negroes, but actually has a good and bona fide mortgage on the same, in full force, executed in the year 1840, as stated in the said bill, for the sum of $, with interest on the same; and that the same has never been paid or in any manner discharged, unless the stealing of the note therein named by the said Z. C. Alvis should be construed as a satisfaction, which he charges the said Z. C. Alvis did, some time about , 184 . And he, the said James Nations, says, that at the time of the execution of the said mortgage the said negroes were bona fide the property of the said Z. C. Alvis; which said mortgage is herewith filed, marked Exhibit No. 2, and prayed to be taken as a part of this answer. And he further states, that the said mortgage was executed to secure him the balance of the purchase-money due for the said negroes by Tilford M. and Z. C. Alvis, and that when the same was so executed, the note of the said T. M. and Z. C. Alvis to the said Z. C. Alvis.

And the said Joseph Nations answering, saith, that some time about he paid as security of the said Z. C. Alvis

the sum of $ to which claims a set-off against the said Z. C. Alvis, and to retain the said negroes until he shall refund the same. They admit the action of detinue in Yallabusha circuit court, and insist that it is the only and proper remedy, if any at all, for compl't; that she and the said Z. C. Alvis, confederating together, authorized the said suit to be brought. That respondents have been put to a great and unnecessary expense in defending said action, to wit, the sum of $20, att'y's fees, for defending said action. They deny getting possession of said slaves by fraud or stratagem; they also deny any concealment in taking the said negroes to Yallabusha county, except such caution as was necessary to prevent the said Z. C. Alvis from stealing the said negroes. Respondents say that the said James Nations has had the possession of said slaves and received the profits thereof, if really they are worth anything beyond their support. Respondents are willing to account to the said Z. C. Alvis for the time of said slaves, and give him credit on the said claims against them. They deny that they are bound to account to the said compl't, denying any title in her; the said James Nations is willing to give such credit on said mortgage as may be just, not knowing at present the precise value of said negroes. And the said Joseph Nations is willing in like manner to give credit on the said $275, and interest he has paid, but says that he has not received one dollar or cent on ac't of said slaves, and has never had the possession thereof, except as agent for James Nations, and then only for a few days. These respondents deny all fraud in the premises. And having fully answered, pray to hence dismissed, with their costs; and here demur to the relief prayed for in said bill, because compl'ts' remedy is at law, and because said bill is not sufficient to give the relief therein prayed.

FISHER,
Sol'r for Def'ts.

THE STATE OF MISSISSIPPI,
Yallabusha County.

This day personally appeared before me, B. B. Pace, an acting justice of the peace in and for the county and State aforesaid, the said James Nations and Joseph Nations, who, being first duly sworn, severally say that the matters and things set forth in the foregoing answer, so far as made upon their own knowledge, are true, and so far as stated from information they believe to be true.

JOSEPH H. NATIONS.

Sworn to and subscribed before me, this the 1st day of Aug., 1847.

B. B. PACE, *J. P.* [SEAL.]

And afterwards, to wit, on the 23d Nov., 1847, the following amended answer and cross-bill was filed, and is as follows, viz:

Amended Answer and Cross-bill.

To the Hon. Henry Dickenson, Vice Chancellor of the State of Mississippi, in chancery sitting, at Carrollton:

Nancy Ann Alvis, by, &c.—Am'd Ans.

And the said James and Joseph Nations, for amended answer and cross-bill against the said complainant, saith, that the consideration of the said four hundred dollars named in the said mortgage was the balance due him on account of the purchase-money due him by the said T. M. Alvis and Z. C. Alvis at the date of the said mortgage, with interest from the time therein mentioned. That the said T. M. Alvis had previously thereto departed this life, and that he, the said James Nations, held the note of the said T. M. Alvis and Z. C. Alvis for the said sum. That at the date of the said mortgage the said Z. C. Alvis represented himself as the true and bona fide owner of said slaves, had the possession thereof, and was receiving the profits arising from their labor. And he, the said James Nations, believes the truth to be, and so charges, that the said Z. C. Alvis was the true owner of said slaves; that the title of said complainant is a mere pretence to defraud him in the premises, and is one of the stratagems of said Z. C. Alvis for the purpose aforesaid, the said complainant being a daughter of the said Z. C. Alvis. He further states, that if the said complainant hath any title to the said slaves, it is without any consideration binding in law; and that the said Z. C. Alvis was and must have been, if complainants' statement be true, her agent in the premises. That he was deceived and defrauded by the statements of the said Z. C. Alvis, touching his right to the property aforesaid, and was induced by the false and fraudulent representations and statements aforesaid to surrender to said Z. C. Alvis the note given for the purchase-money aforesaid, and to take the note of the said Z. C. Alvis secured by the mortgage aforesaid; otherwise he never would have given up said note. He further saith, that the said Z. C. Alvis is interested in said slaves, and is a necessary party to said bill. He therefore insists that the said T. M. Alvis, if he transferred the said negroes to said compl't, that there was no consideration therefor binding in law against his creditors; and that he was only induced to cancel his debt against the said Z. C. Alvis by virtue of the representations aforesaid. That if he was induced by fraudulent means to cancel the said debt against the said T. M. Alvis, the same in law and equity remains uncancelled and in full force. That there has never been any administration on the estate of the said T. M. Alvis; therefore he insists that he has a just claim in equity to the extent of

his debt and interest against the said negroes, independent of the mortgage aforesaid, if the bill be true, which, however, he denies. He prays that the said Z. C. Alvis may be made a party to the bill; which being first done, he prays that the foregoing matters and things herein set forth may be taken as a cross-bill against the said Z. C. Alvis and complainant. And if your honor should think the said Z. C. Alvis is not a necessary party, then the same is to be taken against complainant as a cross-bill, and that the said negroes may be decreed liable to his debt and interest, and such other and further relief afforded him on the trial as may be suitable to his case; and, as in duty bound, he will ever pray.

FISHER, *Sol'r.*

Order for Security for Costs.

And on the 10th Oct., 1849, the following order was made in this cause, viz:

NANCY ANN ALVIS pro ami.
vs. } 349.
JAMES NATIONS and JOSEPH NATIONS.

Upon motion of defendants' counsel, ordered that complainant give security for costs within sixty days, or the bill of complaint will be dismissed.

Order granting leave to file Amended Bill.

And on the same day of the rendition of the foregoing order, the following order was made, viz:

NANCY ANN ALVIS pro ami.
vs. } 349
JAMES NATIONS and JOSEPH NATIONS.

Upon application of defendants' counsel, leave is hereby granted to defendants to file an amended answer; which is herewith filed.

Amended Answer.

And on the 10th Oct., 1849, the following amended answer was filled by leave of the court:

To the Hon. Henry Dickenson, Vice Chancellor of the northern district of Mississippi, in chancery sitting, at Carrollton, Oct. term, 1849.

NANCY ANN ALVIS, by, &c., Complainant,
vs.
JAMES NATIONS and JOSEPH NATIONS, Defendants.

The Supplemental and Amended Answer of James Nations to the Bill of Complaint of the above named complainant.

This respondent, for supplemental and amended answer says and

shows to your honor, that Z. C. Alvis purchased the negroes named in complainants' bill of this respondent, some time in the year 1839, for the sum of about eleven hundred dollars, about seven hundred dollars of which was paid at the time by Z. C. Alvis, and his note given, together with one Tilford Alvis, for the balance. That at the time of said sale, the bill of sale was made to T. M. Alvis, at the request of said Z. C. Alvis; that said Tilford was a son of the said Z. C. Alvis, a young man, and possessing no means with which to purchase negroes; that some time in the year 1839 the said T. M. Alvis departed this life; that the said Z. C. Alvis soon thereafter stated that the said Tilford had before his death made a bill of sale of the said negroes to the said Z. C. Alvis, and thereby prevented your orator from taking out letters of administration on his estate, as a creditor to the extent of four hundred dollars; that no letters of administration have ever been granted upon the estate of the said T. M. Alvis, who died in Yallabusha county, as will appear by Exhibit No. 2, herewith filed; that since the making of said mortgage, as Ex. No. , he has paid the sum of two hundred and fifty-five dollars as security for the said Alvis on a debt due to Wm. Tully, and which was created before the sale of said negroes—a statement of which will be furnished herewith, marked (No. 3,) and prayed to be taken as a part of this answer. He has since the filing of this answer paid the costs of a certain cause of the said complainant at the suit of your respondent, in the high court of errors and appeals, for all of which he insists on a credit—a statement of the last payment will be filed herewith, marked (No. 4,) and prayed to be taken as a part of this answer. That the reason he did not answer fully as to the matters brought into this answer by way of amendment is because he did not think of the same, and the matters aforesaid has not occurred to him until recently. Wherefore he prays leave to file this answer as a part of his defence in this cause and the matters and things decreed accordingly. He shows that the costs paid in the high court of errors and appeals occurred about these same negroes; that your respondent was plaintiff in error in the cause, and gained the same.

FISHER, *Sol. for Def'ts.*

THE STATE OF MISSISSIPPI,
Yallabusha County.

Personally came before me, Sam'l Carr, commissioner in chancery, James Nations, who states on oath that the matters and things stated in the foregoing bill of his own knowledge are true, and those stated upon the information of others he verily believes to be true.

JAMES NATIONS.

Sworn to and subscribed before me, this the 4th day of Oct., 1849.

SAM'L W. CARR, *Comm'r.*

Petition of Nancy A. and James Johnson.

And afterwards, to wit, on the 10th day of Oct., 1849, the following petition was filed, viz:

To the Hon. Henry Dickinson, Vice Chancellor:

The petition of Nancy Ann Johnson and her husband, James Johnson, would show to your honor, that your petitioner, Nancy A., was a minor, and in Nov., 1846, a bill was filed in her behalf by J. S. Wilbourn, as her next friend, against James and Joseph Nations, which is now pending in the district chancery court, at Carrollton. She now begs leave to state, that a few months since she has intermarried with James Johnson, and said Johnson now desires to be made a party to said bill, and that said suit may now be prosecuted by them in their own right.

NANCY A. JOHNSON,
JAMES JOHNSON.

Sworn to and subscribed before me, a notary public, State of Tennessee, Shelby county, 10th Sept., '49.

JAMES ROSE, *J. P.*
Notary Public of State of Tennessee.

Order.

And on the same day of the filing of the foregoing petition, to wit, the 10th Oct., 1849, the following order was made, viz:

NANCY ANN ALVIS
vs.
JAMES and JOSEPH NATIONS.

Upon application, leave was granted to file a petition and petitioner made a party complainant, as husband of the first complainant.

Answer to Cross-bill.

And afterwards, to wit, on the 10th day of Oct., 1849, the following answer of complainants to the foregoing cross-bill was filed, viz:

To the Hon. Henry Dickinson, Vice Chancellor for the northern district of Mississippi:

The answer of Nancy Ann Johnson and James Johnson to the cross-bill of James and Joseph Nations: Your respondents would state to your honor, that since the original bill was filed for your oratrix, N. A. Alvis, by her next friend, Isaac Wilburn, she has

intermarried with James Johnson, who now joins her in the answer to the cross-bill. And now, for answer to so much of the allegations of the cross-bill as it is necessary to answer, states that she is informed that Z. C. Alvis did execute a mortgage on said slaves to secure the balance of the purchase money for the same; but in consideration with this admission, they also state that at the time said mortgage was given Z. C. Alvis informed them that he had no title to the property, and such mortgage could give no security.

And further answering, say that said defendants, at the time said mortgage was given, had in their possession five or six negroes, the property of Z. C. Alvis, to secure his indebtedness to them. And that in 1841 J. C. Alvis had a settlement with defendants, by which the note secured in said deed of mortgage was paid and discharged, Z. C. Alvis being liable thereon as security; and they beg leave to file the said note as exhibit, marked C; and from information they deny that Z. C. Alvis represented himself as the owner of the slaves; and if so, she would insist that it could not prejudice her title. She admits, that at the date of the alleged mortgage she was living with Z. C. Alvis, in Lafayette county, in this State, and the deed or bill of sale was on record in said county on the 4th of April, 1840, and the possession was in her, and the only possession in Z. C. Alvis was simply apparent, and the profits of the slaves were used for her support and education. They deny that Z. C. Alvis had any interest or title to said slaves; but she insists that the negroes were sold in good faith to her brother, Tilford M. Alvis, and title made to him by the defendant, James Nations, and were given to respondent, Nancy, by her brother. They deny that the debt against T. M. Alvis was discharged or released by fraud, but that the same was discharged legally, and the note is now filed with this answer. She admits that no administration has ever been taken on the estate of T. M. Alvis. The only debt against him, except about five dollars, was the note aforesaid, which was paid. And now having fully answered prays for relief.

SHEPPARD, *Sol'r.*

THE STATE OF TENNESSEE,
Shelby County.

This day personally appeared before me, James Rose, justice of the peace and notary public in and for the county aforesaid, James Johnson and his wife Nancy, who having duly sworn, on oath state that the allegations of their answer aforesaid are true, to the best of their information and belief.

NANCY A. JOHNSON,
JAMES JOHNSON.

Sworn to and subscribed before me, this 10th Sept., 1849.

JAMES ROSE, *J. P.*
A Notary Pub. of Tenn.

Exhibit C.

And on the same day of the filing of the foregoing answer the following note, marked and referred to therein as Exhibit C, was filed:

$550

On or before the 3d day of January next, we or either of us promise to pay James Nations, or order, five hundred and fifty dollars, for value received of him this 22d of January, 1838.

Given under our hands and seals.

T. M. ALVIS, [SEAL.]
Z. C. ALVIS, [SEAL.]

Paid January, 1848.

Endorsement: Credit the within note one hundred and fifty dollars. February 15th, 1839.

Bond for Costs.

And on the 26th Nov., 1849, the following bond for costs was filed, viz:

DISTRICT CHANCERY COURT, at Carrollton,
vs.
JAMES and JOSEPH NATIONS.

Know all men by these presents, that I, Charles P. Sheppard, am held and firmly bound unto James and Joseph Nations in the penal sum of one hundred dollars, for which payment I am hereby bound. Sealed and signed, this the 26th Nov., 1849. The condition of the above obligation is such, that whereas if by the decree to be rendered on the final hearing of the above stated cause, the costs of suit shall be ordered to be paid by complainants, then if said Sheppard pay said costs, this bond to be null and void; else to remain in full force and effect.

Witness whereof my hand and seal, the day and date above written.

CHARLES P. SHEPPARD, [SEAL.]

Depositions.

And on the 10th day of Oct., 1849, the following depositions were filed, viz:

Notice.

THE STATE OF MISSISSIPPI.

In Chancery, at Carrollton.

NANCY ANN ALVIS, by, &c., }
vs.
JAMES NATIONS and JOSEPH NATIONS. }

The complainant and her solicitor, C. P. Sheppard, esq., will please take notice, that on Thursday, the 4th of Oct., 1849, before Sam'l W. Carr, esq., a commissioner in chancery, &c., the defendants will proceed to take the depositions of James R. Wyatt, to be read in evidence on the trial of the above stated cause. The deposition will be commenced at the hour of eleven o'clock a. m., and continued until finished, at the office of the clerk of the circuit court of Yallabusha county, at the court-house thereof, when and where you can attend and cross-examine, if you like.

E. S. FISHER,
Sol'r for Deft's.

Sheriff's Return.

Executed Oct. 2d, 1849, ½ after six o'clock p. m.

JAMES CALLENS, *Sheriff.*
By ALEXANDER COLLINS, *D. S.*

I, Samuel W. Carr, a commissioner in chancery, have called and caused to come before me, at the office of the clerk of the circuit court of Yallabusha county, James R. Wyatt, on this 4th Oct., 1849, to give evidence to be read in a matter pending in the district chancery court at Carrollton, wherein Nancy Ann Alvis is complainant and James and Joseph Nations are defendants; the complainants' counsel, C. P. Sheppard, was notified of the time and place of taking this deposition, but did not appear. The deponent being first cautioned and sworn to speak the truth, the whole truth, and nothing but the truth in the premises, deposed as follows:

Int'y 1st. Are you acquainted with the parties to this suit?

Ans. 1st. I am acquainted with James and Joseph Nations, and was acquainted with Nancy Ann Alvis when she was quite young.

Int. 2d. Look upon an instrument of writing herewith exhibited, marked "A," and state if you know anything of the execution thereof, how the debt therein named was created, and for what purpose the mortgage was given.

Ans. 2d. Upon examining the instrument in question I answer that I was present when it was executed. Mr. James Nations sold to Z. C. Alvis a negro woman named Eleanor, and her child, named Tilda, being the same negroes named in the mortgage referred to above. The mortgage was given to secure the payment of the balance due on said purchase of said negroes.

Int'y 3d. At the time of the execution of said mortgage was there a note exhibited *on* spoken of, made by the said Z. C. Alvis; if so, what became of said note. If Alvis was asked if he knew anything of the note, what answer did he make thereto; what was done in reference to finding said note; where was said note last seen about the time above; and what opportunity had the said Z. C. Alvis to get possession of the same?

Ans. 3d. I do not recollect whether the note was exhibited at that time or not; neither do I recollect whether Alvis was asked if he knew anything about the note or not. Mr. Nations said he did not know whether it would be right for him to keep said note or give it to Alvis. At that time, or shortly after, we were searching for the note; I had a handfull of papers, and so had Alvis, looking for the note; Alvis said he did not know what had become of it; Alvis had an opportunity of taking the note while we were looking over the papers for it.

Int'y 4. You will please state the entire circumstances and transactions attending the sale of the negroes named, and the execution of the mortgage.

Ans. 4. At the time Mr. Nations sold the negroes before named to Alvis I was present. Alvis requested Mr. Nations to make the bill of sale to Tilford N. or M. Alvis, which he did. Tilford N. or M. Alvis signed the note first, and Z. C. Alvis signed with him. The reason why Z. C. Alvis wanted the bill of sale taken in the name of Tilford M. or N. Alvis was, as he stated, because that there was some old debts hanging over him, and he was afraid he might be harrassed about them. At the time the mortgage was executed by Z. C. Alvis he told Mr. Nations that his son, Tilford, on his death bed, made him a good title to said negroes.

JAMES R. WYATT.

Further Questions by Def'ts.

State who paid for said negroes—that is, the cash paid down. State the age of Tilford Alvis, and his means for purchasing negroes.

Answer. I do not recollect which of them paid the money. Tilford Alvis was, I suppose, about 22 or 23 years of age. He had no means of purchasing negroes at that time that I know of.

JAMES R. WYATT.

THE STATE OF MISSISSIPPI,
Yallabusha County.

I, Sam'l W. Carr, a commissioner, hereby certify that the foregoing deposition of James R. Wyatt, written upon three pages of paper, was taken before me, at the time and place stated in the caption. The answers to the questions were written down at the time by me in the presence of the witness; and after they were read to

him by me, he signed the same in my presence. I am not in any way related to either party, or in any way interested in the issue of this suit. I further state that said depositions have not been altered since it was signed by the deponent.

Given under my hand and seal, this 4th Oct., 1849.

SAM'L W. CARR, [SEAL.]
Comm'r in Chancery.

Exhibit A.

And on the same day of the filing of the foregoing deposition the following document, marked and referred to therein as "Ex. A," was filed, viz:

January, 9th day, 1840.

Know all men by these presents, that I have this day transferred to James Nations all my right, claim, and interest to Eleanor, a negro woman I have, and her children, to secure him in a certain debt to him for four hundred dollars, and interest on the same for 12 months past, the 23d January, 1840.

Z. C. ALVIS.

The said Alvis is to keep the above named negroes in his possession, and pay off the above amount by the 23d of Dec., 1840, if not sooner paid.

Z. C. ALVIS,
Test: JAS. R. WYATT.

Depositions.

Be it remembered, that on the 10th day of Oct., 1849, the following depositions were filed, viz:

THE STATE OF MISSISSIPPI,
Lafayette County.

Be it remembered, that on the 24th day of September, 1849, I have caused to come before me, E. R. Belcher, an acting justice of the peace in and for said State and county, at the court-house, in the town of Oxford, Z. C. Alvis, T. B. Alvis, G. M. Alvis, John J. Deckand, and John B. Palmer, witnesses on behalf of Nancy A. Johnson and James Johnson, to be read in evidence in a certain matter of controversy now depending in the district chancery court, at Carrollton, in said State of Mississippi, wherein James and Joseph Nations are complainants and said Nancy Ann and James Johnson are defendants. And the said Z. C. Alvis, of lawful age, being first duly sworn the truth, the whole truth, and nothing but the truth to speak, deposeth and saith, viz:

Int'y 1st. Are you acquainted with the parties to this suit?

Ans. 1st. I am.

Int'y 2d. Look at the bill of sale hereto annexed, and state if or not you are a witness to the execution thereof, and all about it.

Ans. 2d. I am a witness, and that is my name as such on the paper, and I saw James Nations sign, seal, and deliver the same, and the property therein named, to T. M. Alvis.

Int'y 3d. Do you or not know what became of the slaves mentioned in the bill of sale after they were delivered *P.* M. Alvis? If so, state all about it.

Ans. 3d. The slaves were afterwards given by *P.* M. Alvis to Nancy Ann Alvis, his youngest sister, as her property; and I have the endorsement made on the bill of sale the 5th of Feb'y, 1839; an he then delivered the bill of sale, together with the property, to me into my hands for her benefit, until she became of age or married, when they were to be delivered up to her.

Int'y 4th. State, if you please, what disposition you made of the said slaves, and if they are in your possession or not.

Ans. I hired them out from the period of my coming into possession—that is of the 5th of Feb'y, 1839—until the fall of 1841. I kept them at home, their situation not admitting of their being hired out. From 1841 to Feb'y, 1843, they were kept hired out—the woman at from $10 to $12 per month, the girl at $3 per month. The morning of the 4th of Feb'y, 1843, James and Joseph Nations called at my house—then I was living in Shelby county, Tennessee, 4½ miles from Memphis—and requested me to go with them in search of some man, who they said owed them money. Joseph Nations remained at my house, his horse being sick. I went with James Nations to Memphis, and returned home between 12 and 1 o'clock. They stayed until after dinner, and then, saying they had to go to James Block's, in Marshall Co., Mississippi, 35 or 40 miles from my house, they left me, and went about 3 miles to Norcemer's creek, and there purchased a horse. At 12 o'clock that night I was awakened from sleep, and discovered that the negroes were gone; discovering some horse tracks, which excited our suspicions, my son and myself started in pursuit, following the tracks as our guide, and overtook James and Joseph Nations a house in Panola county, about 14 miles from the town of Panola, with the negroes, 3 in number, in their possession. I asked them how they came in possession of said negroes, and Joseph Nations said that he and his father had slipped up, and each taking a child they made off, the old woman following them. The next morning they sent for a lawyer, and talked of having a trial, &c.; but, I suppose by advice of said lawyer, they took the negroes and carried them off into Tallahatchie county, whether or no, he, James Nations, saying that he had a right to them.

Int'y 5th. You speak of there being a negro woman and 2 children at the time Nations seized and carried them off. Was not a child born after the negroes came into your possession?

Ans. 5th. There was a child born after she came into my possession, in March or Feb'y, 1839, which accounts for two. Her name is Caroline.

Int'y 6th. Did or did you not have any transactions with Nations yourself during the time you held possession of said negroes in controversy? If so, state the nature of it, and all the particulars.

Ans. 6th. In 1840 James Nations, while I lived Lafayette county, Miss., became my security for something upwards of $3,000. In the month of January, 1841, about the 8th or 9th, I gave him a mortgage on 6 or 7 negroes, my own property. Afterwards Nations insisted that I should give him a further mortgage on the negroes I held belonging to Nancy Ann Alvis. I told him it was unnecessary, as he had plenty of property to secure him, and that I could not guarantee a title to them; but as he insisted, I gave him a mortgage on Nancy's negroes, but told him it would be of no avail, having none. In 1841 we had a settlement, when Nations denied having a mortgage on the 3 negroes of Nancy's, and said he had lost it. On settlement he gave me up one of the negroes which I had mortgaged, Rachel, and I received from him the paper for which the property of Nancy Ann Alvis had been mortgaged. This is the last of the transactions I had with him.

Int'y 7th. Did you or not, in any conversation had with Nations, at that time or at any other time, set up any claim to said three negroes of Nancy Ann Alvis, either by appearing to sell or mortgage them?

Ans. Never, as before stated in the qualifications, that I had no guarantee to give.

Int'y 8th. Do you or have you ever set up any claim to said negroes?

Ans. I do not. They are Nancy A. Johnson's.

And further this deponent saith not.

Z. C. ALVIS.

Sworn to and subscribed before me, this day and year above specified.

E. R. BELCHER, [*J. P.*]

T. B. Alvis being next sworn in due form of law, and of lawful age, saith as follows:

Int'y 1st. Are you acquainted with the parties to this suit?

Ans. I am.

Int'y 2d. Are you the son of Z. C. Alvis, whose deposition has just been taken?

Ans. I am.

Int'y 3d. Please state if you were living with your father in Shelby county, Tenn., at the time James and Joseph Nations came there in 1843. If so, state the particulars and what occurred there in your presence and of your knowledge.

Ans. I was living with my father in 1843 when the Nations came there, early in the morning of the 4th Feb'y, 1843. As well as I recollect, they came to my father's house before breakfast. They said they were in hunt of a man who lived in Memphis, who James Nations said owed him money, and pressed father to go to Memphis with him in search of him, and father concluded to go. Joseph Nations concluded not to go, as his horse was sick. They came back from Memphis about one o'clock that afternoon. Nations appeared anxious to get off, saying he was to ride to Block's that night, and must get home the next day. During the night of the day they were at father's house the negroes, Ellen, the mother, and Matilda and Caroline, her children, were missing. In the morning father and myself started in search of the negroes, supposing, from the circumstances, that Nations had got them off. We rode as far as Mr. Neal's, between Hernando and Panola, and got there after dark. I found the negroes there, in the possession of James and Joseph Nations. Father asked them what time it was when they got the negroes. Joseph Nations answered between 10 and 12 o'clock. James Nations said it made no difference; they got them between dark and daylight. The next morning James Nations came to me, and proposed to have the matter settled up, to send for a justice of the peace, lawyer, &c., and for me to speak to father about it. Father said he had no objection. I started to Bellmont for an attorney. While I was gone Nations' lawyer came to the house, and when I returned Nations and the negroes were gone. So that the lawyer I brought with me had his ride for nothing.

Int'y 4. During the time that you were acquainted with the negroes in controversy, did you ever hear your father set up any claim to said negroes as his own, in any way?

Ans. I never did. I always understood and believed, and to this day believe, that they were my sister's property, and no one else's.

Int'y 5. When and where did you last see the negroes in controversy?

Ans. In Coffeeville, in 1843, when Nations brought them there.

Int'y 6th. Do you or not know the prices of hire which your father obtained for Ellen and Matilda while he had them in his care?

Ans. Ellen hired for about 10 or 12 dollars and Matilda $3 per month, as well as I remember.

And further this deponent saith not.

Z. B. ALVIS.

Sworn to and subscribed before me, the day and date above specified.

E. R. BELCHER, [*J. P.*]

J. D. Palmer, a witness of lawful age, says:

Int'y 1st. Are you acquainted with the parties to this suit?

Ans. With some of them.

Int'y 2d. Were you or not, in the year 1839, a practising physician in the family of Z. C. Alvis, in Lafayette county, Miss.?

Ans. I was.

Int'y 3d. State, if you please, if you as such waited on certain negroes of Nancy Ann Alvis. If so, state, if you please, to whose account you charged your bill, who paid it, and all about it.

Ans. I was called upon to see Ellen, one of the negroes, and charged the account to Z. C. Alvis. He, however, told me that the negro belonged to Nancy Ann Alvis, though he would see the bill paid.

And further this deponent saith not.

J. D. PALMER.

Sworn to and subscribed before me, the day and date above.

E. R. BELCHER, [*J. P.*]

John J. Deckard, another witness, being duly sworn, and of lawful age, saith:

Int'y 1st. Are you acquainted with the parties to this suit?

Ans. I am.

Int'y 2d. State if or not T. M. Alvis, some time in the year 1839, brought certain negroes to your house as his own, and all you know about them.

Ans. He, about the 23d Feb'y, 1838, brought the negroes, Ellen and Matilda, to my house, and said he had bought them of James Nations. I then lived in Yallabusha county. He afterwards rented land and took them away with him.

Int'y 3. State, if you please, what you know in relation to T. M. Alvis giving said negroes to his sister, Nancy A. Alvis.

Ans. I have never heard him say anything about it; but have always heard and believed them to be her property. In 1841 she came to my house and brought said negroes with her as hers. She came in the spring and continued until fall. She was in immediate possession during that time.

Int'y 4. Look at the signature of T. M. Alvis, on the back of the bill of sale, and say if you are acquainted with his handwriting. If so, have you seen him write, and is that his signature?

Ans. I am well acquainted with the handwriting of T. M. Alvis; have seen him write, and should say unhesitatingly that that was his signature.

And further this deponent saith not.

JOHN J. DECKARD.

Sworn to and subscribed before me, this day and year above.

E. R. BELCHER, [*J. P.*]

Gabriel M. Alvis, another witness, of lawful age, being duly sworn, deposeth and saith, viz:

Int'y 1st. Are you acquainted with the parties to this suit?

Ans. I *do*.

Int'y 2d. Please state if you are not a brother of T. M. Alvis; and if yea, state what you know in relation to his purchase of certain negroes from James Nations, what he did with them, and all about it.

Ans. I am a brother of T. M. Alvis, dec'd. I know of his having brought the negroes, Matilda and Ellen, to Mr. Deckard's in 1838, which he said he had bought from James Nations. I moved him myself from Deckard's to land which he had rented in the neighborhood of Oakland, Yallabusha county, about 14 miles from Deckard's. The said negroes went with him. In February or March, 1839, he started for New Orleans. I went with him as far as Pharsalia. During our ride he told me that he had endorsed the bill of sale for said negroes from Nations over to my sister, Nancy Ann, and that his reason for so doing was that if he never returned, he wished her to have this property. He further said, that he wished me to attend to it for my sister, in case father should drop off or any accident occur. We parted and I saw him no more until his death, which occurred the 7th May, 1839, on his return from New Orleans, a short distance from his home.

Int'y 3d. State if or not said property did not continue in your father's hands as Nancy's property, and was so considered, after the death of your brother, and if your father ever had any right to said negroes, or set up any claim to them whatever in his own right. Speak particularly of your own knowledge.

Ans. I never heard of any claim set up by father to said negroes at any time or in any manner, but always looked upon said negroes as a gift to my sister from her brother, and in the old man's hands for her use and benefit.

Int'y 4th. Are you acquainted with the handwriting of T. M. Alvis? Have you ever *saw* him write; if so, please look at the signature to the assignment on the bill of sale annexed, and say if that is his signature?

Ans. I have seen T. M. Alvis write often, and consider myself well acquainted with his handwriting, and believe it to be his genuine signature.

And further deponent saith not.

GABRIEL M. ALVIS.

Sworn to and subscribed before me, this the day and date above written.

E. R. BELCHER, *J. P.*

THE STATE OF MISSISSIPPI,
Lafayette County.

I, E. R, Belcher, an acting justice of the peace in and for the

said county, do hereby certify that the foregoing deposition of Z. C. Alvis, Z. B. Alvis, Gabriel M. Alvis, John J. Dickard, and J. D. Palmer, were taken before me, at the court-house, in Oxford, on the day stated in the caption. The said witnesses were all severally sworn, according to law. The said depositions are all in my handwriting, and were read over to deponents before signing. I further certify, that said depositions have not been out of my possession since the taking of the same; and that no counsel appeared for the parties, neither did the parties themselves.

Given under my hand and seal, this the 24th day of September, 1849.

E. R. BELCHER, *J. P.* [SEAL.]

Order.

And on the 10th day of April, 1830, the following two orders were rendered, and are as follows, viz:

NANCY ANN ALVIS, &c.,
vs.
JAMES and JOSEPH NATIONS.

This cause was submitted on a former day of this term for final hearing on the bill, answer, and cross-bill, and answer thereto, and proof; and his honor being advised in the premises, doth order that the bill of complaint herein be dismissed at complainants' costs of suit; and by request of E. S. Fisher, esq., it is hereby entered of record that he withdraws from the case as counsel for the defendants.

SAME
vs.
SAME.

And the complainant, feeling herself aggrieved by the order of his honor the vice chancellor this day made, dismissing the bill of complaint in this cause, have prayed an appeal, which is hereby granted, upon complainants executing bond in ninety days with Angus W. Ayres, conditioned according to law, for the payment of costs. And by consent, it is agreed that said appeal be taken directly to the high court of errors and appeals, said bond to be in the penal sum of one hundred dollars.

Decision of High Court.

And on the 4th day of February, 1854, the following decree of the high court of errors and appeals in the foregoing case was filed:

The State of Mississippi to the Honorable the District Chancery court, at Carrollton, greeting:

Whereas at a special term of the high court of errors and ap-

peals, begun and held at the capitol, in the city of Jackson, on the 2d Monday of December, in the year of our Lord 1853, the following decree was pronounced in the case of Nancy A. Johnson and al. vs. James and Joseph Nations, brought into said court by writ of error, to wit:

NANCY A. JOHNSON and JAMES JOHNSON,
Plaintiffs in Error,
vs.
JAMES and JOSEPH NATIONS, Defendants.

It appearing to the satisfaction of the court, that notwithstanding the order of publication granted at the October term of this court, in the year 1852, (page 248,) has been duly inserted in the Mississippian and State Gazette, as therein required, and said defendants have failed to appear, it is entered that the court proceed to hear and determine this cause as if process had been served upon them. And therefore, the cause having been submitted upon the record from the district chancery court, at Carrollton, and the court having sufficiently examined and considered the same, and it being of opinion that the slaves, Ellen, and her children, Matilda, about 10 or 12 years old, and Caroline, about seven years old at that time, are the property and separate estate of complainant, Nancy Ann Johnson, in her own right, it is considered by the court, and so ordered, adjudged, and decreed, that the decree of the vice chancellor dismissing the bill of complainants in their behalf, at the April term of said court, in the year 1850, be and the same is hereby reversed; and this court, proceeding to pronounce such decree as the court below should have rendered, doth order, adjudge, and decree, that the complainants do have and recover of and from said defendants, for the *sale* and separate use and right of said complainant, Nancy Ann Johnson, the said slaves, Ellen, Matilda, and Caroline, in the pleadings mentioned, and that said defendants be and they are hereby required to restore and deliver possession of said slaves to Nancy Ann Johnson, or her agent for that purpose authorized. And this court, being further of opinion that said complainant is entitled to have and recover of the defendants hire for said slaves for the time which has elapsed since they were taken from the possession of the complainant, Nancy Ann, it is therefore ordered, adjudged, and decreed, that the cause be remanded to the court below, and that an account thereof be taken according to the course of that court, and for such other and further proceedings as may be required in the premises; and further, that said defendant pay the costs of this cause to be taxed, for which execution may issue, &c.

You are therefore hereby commanded, that such execution and further proceedings be had in said cause as according to right and

justice, the decree of our said high court, and the law of the land ought to be had, the said writ of error notwithstanding.

Witness the Hon. C. P. Smith, presiding judge of our said high court, and seal of said court hereunto affixed, this the 30th day of January, 1854.

[L. S.]

CASWELL R. CLIFTON, *Cl'k.*
By JOSEPHUS DOTRON, *D. C.*

Order appointing Commissioner.

And on the 12th day of April, 1854, at the April term, 1854, of the district chancery court at Carrollton, the following order was made in the foregoing cause:

NANCY ANN JOHNSON et al.
vs.
JAMES and JOSEPH NATIONS.

Ordered, that Rufus K. Bean be appointed commissioner to execute the interlocutory order directing an account to be taken for the hire of the slaves in controversy, and that he make report to this term of the court.

And on the 12th day of April, 1854, the following report of the commissioner heretofore appointed in this cause, was filed, viz:

Commissioner's Report.

To the Hon. Henry Dickenson, Vice Chancellor for the northern district.

The report of Rufus K. Bean shows to your honor, that after giving due notice of the time and place of taking the account for the hire of the slaves, as directed by the decree heretofore rendered in the high court of errors and appeals in the case of Nancy A. Johnson et als. vs. James and Joseph Nations, he did, at the time and place designated in that notice given for that purpose, proceed to examine the proof, and ascertain that, according to said decree, the defendants are liable to account for hire for said slaves from the 4th of Feb., 1843; that he ascertains that two hundred dollars per year is a fair average for the hire of said slaves; that he has accordingly fixed that at the rate of hire, and charging hire until the 4th of February, 1854, there is due to said complainants the sum of twenty-two hundred dollars for the hire of said slaves, and at that rate he allows $200 per year, until they shall be delivered up; all of which is submitted.

R. K. BEAN,
Comm'r.

And on the 14th April, 1854, at the April term, 1854, the following order was made in the foregoing cause, viz:

Order confirming Commissioner's Report.

NANCY A. JOHNSON et als.
vs.
JAMES and JOSEPH NATIONS.

In the District Chancery Court, at Carrollton.—April Term, 1854.

Present, the Hon'l Henry Dickenson, vice chancellor for the northern district of the State of Mississippi.

This cause having been submitted on the report of the commissioner appointed to ascertain the hire of the slaves in controversy; and it now appearing, that after due notice the said commissioner did proceed to execute said commission, and has made report, showing that on the 4th of February, 1854, said respondents were indebted to said complainants in the sum of twenty-two hundred dollars, for the hire of said slaves to that date, and that two hundred dollars per annum will be a reasonable hire for the same, it is therefore further ordered and decreed, that said complainants do have and recover of the said defendants, James and Joseph Nations, the sum of two thousand two hundred dollars, with interest till paid, at the rate of six per cent. per annum, from and after the 4th day of February, 1854, and that they do receive at the rate of $200 per year, the hire of said slaves, from and after the said date of 4th Feb'y, 1854, according to the decree rendered in this cause; and that said report be in all things confirmed, and that execution issue as at law for the amount herein directed to be paid, and that complainants recover of them all their costs in this behalf expended.

HENRY DICKENSON.

THE STATE OF MISSISSIPPI,
District Chancery Court.

I, Rufus K. Bean, cl'k of said court, do hereby certify that the foregoing forty-six pages, and a part of the 47th, do contain a full, true, and perfect exemplification of all the record, process, and proceeding had and done in the case in the caption set forth, as *a* also a correct transcript of the decree rendered by the high court of errors and appeals in said cause, as fully and completely as the same remains of record and on file in my said office.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at Carrollton, this the 31st day of May, A. D. 1854.

[L. S.]

RUFUS K. BEAN, *Cl'k.*
By LOUIS MOORE, *D. C.*

THE STATE OF MISSISSIPPI.

I, Henry Dickenson, vice chancellor of the district chancery court of the State of Mississippi, for the northern district of said State, do certify that Rufus K. Bean was on said 31 of May, 1854, the

clerk of said court, at Carrollton, Mississippi; that full faith and credit may be given to his annexed certificate, and the same is in due and legal form.

Given under my hand and seal, this 14th day of July, 1854.

HENRY DICKENSON, [SEAL.]
Vice Chancellor of the State of Mississippi.

1st. Because it appears from the face of said record that the judgment of said vice chancery court was in favor of the defendants, adjudging costs against the complainants, and that the defendants' counsel, at the time of entering judgment by the court, withdrew from the case, and had the withdrawal entered of record, and that the appeal was not prosecuted in 90 days from the date of the order of court granting it, nor in the time prescribed by the statute law of the State of Mississippi; and that no application for a writ of error, no citation to the defendants in error, and no writ of error appear in said record. That no new trial was granted; that no proceeding appears of record which could take said proceedings to an appellate court. And that it does not appear from the record that the said court had any jurisdiction at the time of rendering after the remanding of said case from the high court of errors and appeals; and that it appears from the face of said record that the said high court had no jurisdiction, save by service by publication, to try and to remand said cause, and that said judgment from the court was null beyond the territorial limits of the State of Mississippi, because the service to the defendants in said high court was by publication, and not personal. It does not appear from the said record that the defendants were ever cited by personal service to appear before said vice chancery court and contest the account taken.

2d. That it appears from said record that said vice chancery court had no jurisdiction of the persons or property of the defendants, and that said judgment is null and void beyond the territorial limits of the State of Mississippi, and cannot be made the foundation of an action against the defendants in this court, sitting in a jurisdiction which is foreign to the State of Mississippi.

3d. Because it appears from the face of said record that the original suit was instituted, the proceedings had, and judgment rendered in a court of equity, to wit, the vice chancery court for the northern district of Mississippi, which judgment rendered on proceedings had in a court of equity cannot be made the basis and foundation of an action against the defendants in this court, which is a court of common law. All which objections the court overruled, and permitted the plaintiffs to read the said record in evidence to the jury; to which the defendants excepted at the time. And thereupon the plaintiffs introduced G. W. Glasscock and Goodrich to prove the value of said slaves mentioned in the record; to which evidence defendants objected—

1st. Because the plaintiffs had not shown in themselves a legal title to said slaves, and therefore could not prove their value.

2d. Because said judgment was a judgment in specie for the slaves, and under the terms of said judgment declared on the plaintiffs could not be permitted either to recover the value of said slaves in this suit or introduce evidence as to their value.

Which objections the court overruled, and permitted said witnesses to testify, to which the defendants excepted at the time; and said witnesses testified that two of the slaves were worth nine hundred dollars each, and the other seven hundred dollars.

Here the plaintiffs closed their case, this being all the evidence introduced on the trial.

To all of which several rulings of the court the defendants excepted at the time; which exceptions not appearing of record, time was given to prepare this third bill of exceptions. And now the court certifies this third bill of exceptions, and orders the same to be made a part of the record.

THO. H. DUVAL, [SEAL.]
U. S. Judge.

Defendants' Fourth Bill of Exceptions.

NANCY ANN JOHNSON and JAMES JOHNSON
vs.
JAMES NATIONS and JOSEPH NATIONS.

Be it remembered, that on the trial of this case, after the plaintiffs had introduced all their evidence and closed their case, the defendants offered to read in evidence to the jury the following statement of facts, admissions made by the plaintiffs:

JOHNSON
vs.
NATIONS and NATIONS.

Federal Court of the U. S., western district of Texas.

It is agreed by the counsel for the respective parties to this suit, that James and Joseph Nations removed from the State of Mississippi about the 20th day of January, 1850, and became citizens of Texas, and domiciliated therein on or about the 21st day of February, 1850. That said James and Joseph Nations, after becoming citizens of Texas, and domiciliated therein as aforesaid, about the 21st day of February, 1850, have never removed therefrom, remaining citizens thereof from that date until the present time. These admissions are made by both parties through their counsel in order to save the trouble and expense of either propounding interrogatories to witnesses to prove such facts, or to bring the witnesses on the stand to testify.

Austin, January 13th, 1858.

HAMILTON, CHANDLER & WALTON,
Att'ys for Defendants.

The above facts are admitted, but exceptions as to their admissibility in evidence reserved.

OLDHAM,
Att'y for Pl'ff.

To the introduction of which evidence the plaintiffs objected; which objection was sustained by the court, and said evidence excluded.

To which ruling of the court the defendants excepted at the time; which exception not appearing of record, time was given to prepare this fourth bill of exceptions, and now the court signs, certifies, and seals this fourth bill of exceptions, and orders the same to be made part of the record.

THOS. H. DUVAL, [SEAL.]
U. S. Judge.

Defendants' Fifth Bill of Exceptions.

NANCY ANNA JOHNSON and JAMES JOHNSON
vs.
JAMES NATIONS and JOSEPH NATIONS.

Be it remembered, that on the trial of this cause, after the plaintiffs had introduced all their evidence and closed their case, and after the evidence of the defendants had been excluded, as set forth in the bill of exceptions number four, the court proceeded to charge the jury, after summing up the case; which charge is as follows:

This record is conclusive proof before you as to the title of the negroes being in *in* the plaintiffs, and the value of their hire up to the day of , 1854, as shown by the record.

The jury will therefore return a verdict for the plaintiff for the amount of hire, at the rate of $200 per annum, from the date of the decree to this time. And they will further say in their verdict what they find the negroes to be worth at this time, fixing the value of each separately.

They will also find for the plaintiff the amount due on the twenty-two hundred dollars, with interest thereon at the rate of six per cent. per annum, as fixed by the decree.

T. H. DUVAL,
U. S. Dist. Court Judge.

Defendants' Sixth Bill of Exceptions.

NANCY ANN JOHNSON and JAMES JOHNSON
vs.
JAMES NATIONS and JOSEPH NATIONS.

Be it remembered, that in the trial of this case, after the plaintiffs had closed their case and the evidence of the defendants had been excluded, as mentioned in the bill of exceptions number four, and after the charge in chief, as set forth in bill of exceptions

number five, had been delivered by the court to the jury, the defendants asked the court to charge the jury as follows:

1st. The transcript from the record of the high court of errors and appeals and the chancery court for the northern district of the State of Mississippi are not evidence sufficient to entitle the plaintiffs to recover.

2d. That that portion of the decree of the chancery court at Carrollton, Mississippi, fixing the hire of the negroes at two hundred dollars a year, from and after the date of that decree, is no evidence of the value of the hire of said negroes; and unless the plaintiffs have introduced some evidence independent of that record, proving the value of the hire, the jury cannot allow hire from the date of the judgment rendered by the vice chancellor.

CHANDLER & WALTON,
Att'ys for Defendants.

The above instructions are refused.

T. H. DUVAL,
U. S. Dist. Judge.

Which instructions were refused by the court; to which refusal and ruling of the court the defendants objected at the time, and time was given to prepare this exception; and now the court signs, certifies, and seals this sixth bill of exceptions, and orders the same to be made part of the record.

THOS. H. DUVAL, [SEAL.]
U. S. Dist. Judge.

THE UNITED STATES OF AMERICA.

District Court of the United States for the western district of Texas, at Austin, holding sessions, to wit:

I, Matthew Hopkins, clerk of the district court of the United States for the western district of Texas, at Austin, certify the foregoing one hundred and forty-three pages to be a true and perfect transcript of the record and all the proceedings had in case number 247, law, wherein Nancy Ann Johnson and James Johnson are plaintiffs and James Nations and Joseph Nations are defendants.

In testimony whereof I have hereunto set my hand and affix the seal of the court. Done at the city of Austin, this thirty-first day of August, in the year of our Lord one [L. S.] thousand eight hundred and fifty-eight, and the eighty-third year of the independence of the United States of America.

MATTHEW HOPKINS, *Clerk.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Judge of the District Court of the United States, for the western district of Texas, having circuit court powers:

Because that in the record and process, and also in the rendering of judgment in a suit before you, between Nancy Anna Johnson and James Johnson, plaintiffs, and James Nations and Joseph Nations, defendants, in a plea of debt on a judgment from the State of Mississippi, and for damages, at Austin, a manifest error has intervened, to the great damage of the said James Nations and Joseph Nations, as in their complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the national government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Roger B. Taney, esquire, Chief Justice of said Supreme Court, at Washington aforesaid, this 13th day of February, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-second.

[SEAL.] THO. H. DUVAL, *U. S. Judge.*

I, Matthew Hopkins, clerk of the district court of the United States, for the western district of Texas, at Austin, the said court having circuit court powers, do hereby certify the writ of error on the reverse of this page, wherein James and Joseph Nations are plaintiffs in error and Nancy Ann Johnson and James Johnson are defendants in error.

In testimony whereof I have hereunto set my hand and the impress of the seal of court, the Hon. Thos. H. Duval being judge of the same. [L. S.]

MATTHEW HOPKINS, *Clerk.*

Citation.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to Nancy Anna Johnson and James Johnson, or Williamson S. Oldham, their attorney of record, greeting:

You are are hereby cited and admonished to be and appear at a

Supreme Court of the United States, to be holden at Washington, on the 1st Monday in December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States, for the western district of Texas, at Austin, having circuit court powers, wherein James Nations and Joseph Nations are plaintiffs and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas H. Duval, judge of the district court of the United States, for the western district of Texas, at Austin, having circuit court powers, this the 13th day of February, in the year of our Lord 1858.

[L. S.] THO. H. DUVAL,
U. S. Judge.

I, Matthew Hopkins, clerk of the district court of the United States, for the western district of Texas, the said court having circuit court powers, do hereby certify that the citation "in error" directed to Nancy Ann Johnson and James Johnson, defendants in error, or to Williamson and Oldham, their attorney of record, because of the non-residence of the said defendants in error, signed by Thomas H. Duval, judge of said court, on the reverse of this page, was so signed by the judge of this court, and filed by the attorney of plaintiffs in error, James Nations and Joseph Nations, this the 13th day of February, A. D. 1858. In testimony whereof I have hereunto set my hand and the impress of the seal of court, at Austin, this 13th day of February, A. D. 1858, and of the independence of the United States the 82d year.

[L. S.] MATTHEW HOPKINS,
Clerk.

Received of Matthew Hopkins, cl'k of the U. S. dist. court, at Austin, Feb'y 18, '58, and executed the same on same day, by handing to W. S. Oldham, att'y of record for Nancy Ann Johnson and Jas. Johnson, deft's in error herein, a certified copy by the cl'k of this court of the within citation in error.

CHAS. CONEY,
Dep'ty U. S. M., W. D. T.

Service, $2 00.

Sworn to and subscribed before , this 18th of Feb., 1858.

M. HOPKINS,
Clerk and Ex-Officio U. S. Commissioner.

STATE OF TEXAS,
Travis county.

Know all men by these presents that we, James Nations and Joseph Nations as principals, and as sureties, are held and firmly bound unto Nancy Ann Johnson and James Johnson in the sum of two hundred dollars, the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

The consideration of the above obligation is such, that whereas the said James Nations and Joseph Nations have prosecuted an appeal to the Supreme Court of the United States from the district court of the United States for the western district of Texas, sitting at Austin, in a certain case, where Nancy Ann Johnson and James Johnson were plaintiffs and the said James Nations and Nations are defendants, now, if the said James Nations and Joseph Nations shall pay all costs which shall accrue in the said cause in the U. S. Supreme Court then this obligation shall be void; otherwise to remain in full force and effect.

Witness our hands and seals, using scrolls for seals, at Austin, this ninth day of September, 1858.

JAMES NATIONS, [L. S.]
J. M. NATIONS, [L. S.]
J. R. BRANTLEY, [L. S.]
WM. C. CAVITT, [L. S.]

STATE OF TEXAS,
County of Gonzales.

I, A. D. Harris, sheriff of Gonzales county, State aforesaid, certify that I am personally acquainted with the parties who signed the within bond, and to my personal knowledge I know them to be good for any amount of money up to the sum of one hundred thousand dollars. I would say, from my knowledge of the effects of James Nations, that he is worth sixty or seventy thousand dollars. I would also say that J. M. Nations is worth twenty thousand dollars, and I would say that W. C. Cavitt is worth twenty thousand dollars. I would say J. R. Brantley is worth twelve thousand dollars.

In testimony I have hereto set my hand, at Gonzales, this 21st day of Sept., 1858.

A. D. HARRIS,
Sh'ff G. C.

Filed 29 Dec'., 1858.